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INDIAN CONSTITUTIONAL DOCUMENTS

1757—1947

VOLUME I : 1757—1858

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ANNEXATION OF BURMA
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THE EASTERN FRONTIER OF BRITISH INDIA
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THE RAJPUT STATES AND THE EAST INDIA COMPANY

INDIAN CONSTITUTIONAL DOCUMENTS

1757—1947

EDITED BY

ANIL CHANDRA BANERJEE, M.A., Ph. D.

Premchand Roychand Scholar, Mouat Medallist

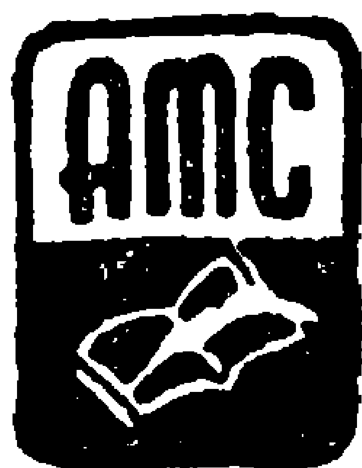
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IN FOUR VOLUMES

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To

The Memory of

THE FOUNDERS OF THE

BRITISH INDIAN ASSOCIATION

PREFACE TO THE FIRST EDITION

This volume is intended to facilitate the study of Indian constitutional history. I have incorporated in it documents of various types : statutes, speeches, despatches, minutes, treaties, even private letters. The development of a constitutional system and the ramifications of an ever-growing administrative machinery cannot be understood simply from an analysis of legislative enactments. I have, therefore, tried to collect materials which an orthodox constitutional lawyer would hesitate to use but which historians can hardly afford to ignore. I have not confined my attention to the well-known landmarks, like the Acts of 1773, 1784 and 1833 ; within the limitations of the available space I have tried to call my readers' notice to problems less imposing but hardly less vital—administrative problems arising directly out of Parliamentary legislation. I have also included some documents relating to British relations with the Indian States. During the period covered by this volume the problem of the States was not directly concerned with the constitutional and administrative evolution of British India ; but the importance which that problem has assumed in recent times demands a thorough acquaintance with the past. For the convenience of the general reader I have added some notes and references and also a brief introductory survey. I hope they will be of some assistance in understanding the documents, although it is obvious that it is not my purpose to give an exhaustive summary of Indian constitutional history.

Due to the confusion created by the war I have not been able to approach authors and publishers for permission to print extracts from their books. For this unintentional lapse I crave their indulgence.

A. C. BANERJEE

PREFACE TO THE SECOND EDITION

Indian Constitutional Documents was originally published in two volumes. The first volume covered the period 1757-1858; the second volume dealt with the constitutional developments in India under the British Crown (1858—1945). I have now found it necessary to reprint the book in a larger form. So I have divided it into three volumes: Volume I, 1757-1858; Volume II, 1858-1917; Volume III, 1917-1939. Documents relating to the years 1939-1945 have been transferred to my book *The Making of the Indian Constitution*, which covers the period 1939-1947.

The present edition of this volume contains some new documents (Nos. 38, 39, 43, 44, 49, 54), but some documents relating to the end of the Company's rule (Nos. 53, 54, 55, 58 of the first edition) have been transferred to Volume II. Introductory notes have been added to most of the documents. Some changes have been made in *Introduction*, but its scope remains unchanged. I hope this edition will be more useful to its readers then its predecessor.

A. C. BANERJEE

PREFACE TO THE THIRD EDITION

Apart from some changes necessitated by revised classification of documents, this edition is a reprint of the second edition.

A. C. BANERJEE

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INTRODUCTION

The 'Trading Period' : 1600—1765[1]

According to Sir Courtenay Ilbert, during the period 1600—1765 'the East India Company are primarily traders'.[2] The constitution, legislative powers and privileges of the Company were defined by Elizabeth's famous Charter[3] of December 31, 1600. The control of the Company's business was invested in twenty-four committees and a Governor. These committees—not bodies, but individuals—were the predecessors of the later Directors. Of the privileges granted to the Company the most important was the exclusive right of trading 'into and from the East Indies, in the countries and parts of Asia and Africa, and into and from all the islands, ports, havens, cities, creeks, towns, and places of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperanza to the streights of Magellan.' The Company also received certain specified legislative and judicial powers, to which may be traced the origin of the later Anglo-Indian codes.

The extension of the privileges of the Company was the inevitable result of the difficulties which confronted the British merchants during their early voyages to the East. It was found necessary to enforce martial law for the maintenance of discipline on long voyages. In 1615 the necessary authority was given to the Company by a grant of James I, who had already renewed Elizabeth's Charter and made it perpetual (subject to determination after three years' notice) by the Charter of 1609. The Company's power of controlling and punishing its servants was further extended by James I's grant of 1623.

During the reign of Charles I the Company suffered from two difficulties. The competition of the Dutch merchants, who were strongly supported by their Government, expelled the

1 Document No. 18.

2 The *Government of India*, p. 1.

3 P. Mukherjee, *Indian Constitutional Documents*, pp. 1-20.

Company from the East Indies. Henceforward its activities were necessarily concentrated in India. Secondly, Charles I granted a licence to Sir William Courten in 1635 to trade with the East Indies. Courten's Association was generally spoken of as the Assada Company, for it had a settlement at Assada in Madagascar. Although it could not secure considerable fortunes for itself, it put the Company into many difficulties.

Cromwell rescued the Company from these difficulties. By the treaty of Westminster (1654) he secured from the Dutch a large sum of money as compensation for the massacre of Amboyna (1623) and the exclusion of the Company from the East Indies. In 1657 he granted a Charter which provided for the union of Courten's Association with the Company. But he borrowed from the Company for the expenses of the State a large sum of money which he never repaid. Thus began the policy of forcing the Company to pay for its privileges.

Charles II's Charter of 1661 reorganised the Company on the joint-stock basis and considerably extended its privileges. It was given 'power and command' over its fortresses. It was empowered to appoint Governors and other officers for their administration. It was authorised to govern its employees in a legal and reasonable manner and to punish them for misdemeanour and disobedience. Moreover, the Governor and Council of each factory were empowered 'to judge all persons belonging to the said Governor and Company or that shall live under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgment accordingly.' Finally, the Company might authorise its 'commanders and officers........to continue or make peace or war with any people that are not Christians, in any places of their trade.'

'The transition of the Company from a trading association to a territorial sovereign invested with powers of civil and military government' proceeded a step further when, by a Charter of 1668, Charles II transferred the island of Bombay to the Company. The Company was authorised to make laws and ordinances for the good government of the port and island and of the inhabitants thereof, and also to exercise judicial authority through its Governor and other officers. In respect of military

forces the Governor of the island was empowered to exercise 'all such powers and authorities' as 'any captain-general of our army.......may or might lawfully do.' By a Charter of 1677 the Company received the right of coining money at Bombay. In 1678 the Company's officers at Madras began to exercise the judicial powers conferred upon them by the Charter of 1661.

Sir Josiah Child, whose influence was largely responsible for the conspicuous marks of royal favour received by the Company during the Restoration period, wanted to strengthen the Company on the model of the Dutch East Indies Company and even to establish an Empire in India. So he secured a remarkable extension of the political and judicial powers of the Company. By a Charter of 1683 the Company was authorised to declare and make peace and war with any of the 'heathen nations' of Asia, Africa and America, to raise military forces and to 'execute and use' martial law. But the Crown reserved its 'sovereign right, powers, and dominion over all the forts and places of habitation' and also its 'power of making peace and war, when we shall be pleased to interpose our royal authority thereon.' As Keith points out, here is an unmistakable expression of the fundamental rule that 'the acquisition of sovereignty by subjects of the Crown is on behalf of the Crown and not in their own right.' The same Charter strengthened the judicial administration in the Company's territories in India by providing for the establishment of a court of judicature (to be held at such place or places as the Company might direct) composed of 'one person learned in the civil law and two assistants' to be appointed by the Company.

The privileges of the Company were renewed and confirmed by James II's Charter of 1686, which also authorised it to appoint admirals and other sea officers in any of its ships within the Charter limits, to raise naval forces, and to exercise martial law in the time of open hostility on the other side of the Cape of Good Hope. The Company also received the general power of coining in its forts any species of money usually coined by Indian princes.

In 1687 James II conferred upon the Company the power of establishing a municipality at Madras. According to the terms

of the Company's Charter which established the municipality, the Mayor and Alderman became a court of record, with power to try civil and criminal causes.

Once again the prospects of the Company were shattered by troubles both at home and abroad. The conflict with the Mughal Government, which began in 1686, weakened and discredited the Company.[1] In England the Revolution of 1688 dealt a severe blow to the influence and policy of Sir Josiah Child. In 1689 the Company passed an important resolution: "The increase of our revenue is the subject of our care as much as our trade; 'tis that must maintain our force when twenty accidents may interrupt our trade; 'tis that must make us a nation in India; without that we are but a great number of interlopers, united by His Majesty's Royal Charter........". The voice is unmistakably that of Sir Josiah Child; it 'announces in unmistakable terms the determination of the Company to guard their commercial supremacy on the basis of their territorial sovereignty and foreshadows the annexations of the next century'[2]. But for the time being the Company had to pass through a critical situation. A 'New Company' was formed, and in 1691 Parliament decided that the trade with the East Indies would be best carried on by a joint-stock company enjoying extensive privileges. An attempt to amalgamate the two Companies was frustrated by Sir Josiah Child's obstinacy. The House of Commons thereupon requested the Crown to give the Old Company the requisite three years' notice of the determination of its Charter. At last Sir Josiah Child was able to influence the Government through lavish gifts, and in 1693 a Royal Charter confirmed the existing privileges of the Old Company, subject to its acceptance of such further regulations as might be imposed on it within a year. Two supplementary Charters (1693, 1694) changed and regulated the constitution of the Company, and further changes in this respect were introduced by a Charter of 1698

The position of the Company was strengthened, but its complete safety was not assured, by the Charter of 1693. In 1694 the House of Commons resolved that 'all the subjects of

1 Sir J. N. Sarkar, ***History of Auranzib***, Vol. V, Chapter LX.

2 Ilbert, ***The Government of India***, p. 24.

England have equal rights to trade to the East Indies unless prohibited by Act of Parliament'. A resolution of the House of Commons had no legal effect, and in practice the Company was strong enough to create troubles for interlopers. But, from the constitutional point of view, this resolution marks the beginning of Parliamentary control over the Company's affairs. In the words of Macaulay, "It has ever since been held to be the doctrine that no power but that of the whole legislature can give to any person or to any society an exclusive privilege of trading to any part of the world."

In 1698 Montagu, the Chanceller of the Exchequer, in order to extricate the State from its financial embarrassments, secured the establishment of a joint-stock company under the name of "The English Company trading to the East Indies". This Company was framed on the model of the Old Company and given similar privileges. It was authorised to enjoy the exclusive privilege of trading to the East Indies, subject to a reservation of the concurrent rights of the Old Company until September 29, 1701. But the Old Company became the largest single share-holder in the English Company, and, owing to its influence in India, the privileges obtained by the English Company remained nominal. The amalgamation of the two Companies was the only logical solution of the difficulties created in 1698. That solution was effected in 1702 through the intervention of Lord Godolphin. Henceforward the trade of the two Companies was to be carried on jointly in the name of 'The United Company of Merchants of England Trading to the East Indies'[1] by 24 managers, half selected by either Company. In 1709 the managers became Directors under the first Charter granted by Queen Anne to the United Company. By an Act of 1707 the Company was required to advance to the Crown a large sum of money, and secured in return the continuance of its privileges at least until 1726. Different Acts passed in 1711, 1730 and 1744 extended the duration of the Company's privileges to 1780 ; in return the Company had to advance further loans and to reduce interest on existing loans.

1 The Charter Act of 1833 used the shorter name : The East India Company.

In 1726 a Royal Charter was granted, establishing or reconstituting municipalities at Madras, Bombay and Calcutta. At each settlement the Mayor's Court was invested with civil jurisdiction, and provision was made for a regular system of appeal from this court to the Governor and Council and thence to the King in Council. Authority was given to the Governors and Councils of the settlements to make by-laws and ordinances, which had to be confirmed by the Court of Directors. Thus subordinate legislative bodies were established in India. According to some judicial authorities, the English criminal law was introduced at the presidency towns of India by the Charter of 1726.[1] The capture of Madras by the French in 1746 made it necessary for the Company to surrender the Charter of 1726, and a new Charter was granted in 1753. This Charter excluded from the jurisdiction of the Mayor's Court all suits and actions between Indians, unless both parties submitted them to the determination of that court.

The outbreak of war between England and France in 1744 and the extension of their hostilities to India in 1746 made it necessary for the Company to strengthen its European force by creating an Indian army. In 1748 a small body of sepoys was raised at Madras. Further legislation now became necessary for the maintenance of military discipline. An Act of 1754 laid down for the Company's Indian troops provisions on lines similar to those of the English Mutiny Acts.

Two later Charters (1757, 1758) regulated the distribution of booty and the cession of territory. In 1758 the Company was granted the power, by treaty of peace made with any Indian Prince or Government, to cede, restore, or dispose of any fortress, district or territory acquired by conquest from any Indian Prince or Government; but in the case of territories acquired from the subjects of any European Power the Company could not exercise these rights without the special licence of the Crown.[2]

1 See Ilbert, *The Government of India*, pp. 32-33.

2 See *Cambridge History of India*, Vol. V, p. 593.

Sir Courtenay Ilbert[1] observes, "British authority in India may be traced, historically, to a twofold source. It is derived partly from the British Crown and Parliament, partly from the Great Mogul and other native rulers of India."[2] In the above paragraphs we have referred very briefly to some salient features of the grants received by the Company from the British Crown and Praliament during the period 1600—1758. During the same period it received from 'the Great Mogul and other native rulers of India' some remarkable concessions, which conferred upon it partial rights of territorial sovereignty. In 1639 the local Hindu chief of Wandiwash granted the Company the right of building a fortress, of minting money, and of governing Madras under certain conditions. In 1672 Madras came wholly under British control, and no local Indian authority was left there. The sovereignty of the Mughal Empire was formally expressed in the payment by the Company of a quit rent, and the Mughal authorities permitted the Company to coin at Madras only a particular pattern of the rupee. In 1752 the Nawab of the Carnatic, the local representative of the declining Mughal Empire, renounced the quit rent; the Company's authority in the town of Madras became absolute.

On the conclusion of the hostilities with the Mughal Government the Company established a settlement at Sutanati (the site of the future Calcutta) in 1690. Six years later the factory was fortified. In 1698 the Company purchased the *zamindari* right (*i.e.*, the right to collect the revenue and exercise civil jurisdiction) in the three villages of Sutanati, Calcutta and Govindpur. In 1717 John Surman procured from Emperor Farrukhsiyar three *firmans*, one of which, addressed to the *Subadar* of Bengal, authorised the Company to acquire some villages near Calcutta. But Murshid Quli Khan, who governed Bengal almost as an independent sovereign, made it impossible for the Company to acquire villages in terms of the Imperial *firman*.

1 *The Government of India*, p. 1.
See *Cambridge History of India*, Vol. V, Chapter XXXII.
2 Document No. 18.

In 1757 Siraj-ud-daula, Nawab of Bengal, confirmed by a formal treaty the privileges of the Company and permitted it to fortify Calcutta and also to coin money. After the battle of Plassey the territorial power of the Company in Bengal was extended and consolidated.[1]

Double Government in Bengal: 1765—1772

The battles of Plassey (1757) and Buxar (1764) practically invested the Company with the territorial sovereignty of Bengal, Bihar and Orissa; but 'the obvious moral of 1764' was not recognised, and the policy of using the Nawab's name as a veil over the Company's power was deliberately adopted[2]. The treaty with Najm-ud-daula[3] and the grant of *Dewani* by Emperor Shah Alam[4] put the Company in absolute control over the Nawab's military forces and revenue administration. The actual administration was, however, left to the deputies of the Nawab, who were virtually nominees of the Company. Thus the Nawab was left as 'a mere pageant and a shadow,' but the Company did not assume responsibility for the good government of the provinces.

This anomalous plan of a Double Government naturally failed[5]. As Verelst pointed out, "such a divided and complicated authority gave rise to oppressions and intrigues unknown in any other period." In 1772 Warren Hastings gave effect to the resolution of the Court of Directors 'to stand forth themselves in the character of Dewan'[6]. The *Nizamat* was also taken over from the Nawab, and the seat of government was transferred from Murshidabad to Calcutta. The question of the Nawab's sovereignty was raised in two cases decided by the Supreme Court[7] in 1775. In one of these cases the Chief Justice concluded, "Nothing is left to Mubarick[8] but an empty title"[9].

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1 Document No. 1.
2 Document Nos. 2, 3 (I).
3 Document No. I (III).
4 Document No 3 (II).
5 Document No. 3 (IV, V).
6 Document No. 4.
7 See I. Banerjee, *The Supreme Court in Conflict*, pp. 154-163.
8 Nawab Mubarak-ud-daula.
9 Document No. 8.

Parliamentary intervention : 1767—1786

The establishment of the Company's *de facto* rule in Bengal, Bihar and Orissa brought into prominence the vital question of its relation to the British Crown and Parliament. The view that the Company's privileges and powers should remain untouched had few supporters. "There seemed a danger not only that misgovernment in India might tarnish the name of Great Britain as an imperial state, but that the Indian interest in England, supported by huge revenues and corrupt Parliamentary influence, might gain a preponderating and improper power in home affairs".[1] Nor was it possible to bring the territorial possessions of the Company under the direct rule of the Crown, for such a drastic change was opposed to the eighteenth century tradition of the sacredness of property[2]. Moreover, the abolition of the titular sovereignty of the Mughal Emperor might excite the jealousy and alarm of other European nations in the East[3]. So it was decided to bring the Company under the control of the State, leaving to the former its monopoly of trade and the disposal of patronage, but securing to the latter over-riding authority in all affairs relating to the higher branches of government. This assertion of the control of the State over the Company is the most important feature of the constitutional history of the period 1767—1786.

The process begun by the Acts of 1767 was carried a step farther by the Regulating Act[4]. The circumstances[5] leading to the enactment of Lord North's famous measure bring some conclusions into clear relief. In the first place, Parliamentary interference in Indian affairs was conditioned exclusively by financial and political factors operating in Great Britain ; for 'the unhappy Natives' their new rulers had hardly any political or moral responsibility. Secondly, even if the British Government had any desire to provide for good government in India, expert advice and necessary facts were not available. The only

1 *The Cambridge History of India*, Vol. V, p. 183.

2 See pp. 35, 96.

3 See pp. 10-11.

4 Document No. 6.

5 See pp. 19-21.

persons competent to advise the Government were the 'voracious Birds of Passage' whom Burke detested. Lord North consulted Clive, but this consultation does not seem to have produced much effect. Thirdly, Lord North was not the man to take any strong and decisive measure. Habitual indolence, coupled with the desire to 'let sleeping dogs lie,' led him to leave the *status quo* as much undisturbed as possible. He declared in the House of Commons, "There must be constant inspection of Parliament over the conduct of the Company."[1] But the machinery which he created to make Parliamentary inspection a reality very soon developed disconcerting cracks. Perhaps Lord North was conscious of the defects of his legislative child, for he declared, "I do not rest my reputation upon having proposed a law that is to be invariable, that no circumstance, that no case, is to alter. Let the circumstance and the case arise such as ought to convince the world (that there is need of) some alteration, I shall thank the man who proposes and willingly alter, but I must go on in a course I have unwillingly begun, (in) a duty I have unwillingly begun, till I find it unwise to continue, or impossible."[2]

Chatham described the Regulating Act as 'an attempt towards Reformation'[3]. Unfortunately the attempt was one-sided, and confined to London. Lord North claimed that he was conscious of 'the sufferings of the people' in India, but in his view these sufferings 'had not proceeded from a want of political freedom so much as a want of government of the Europeans, the servants of the Company, and those who are protected by the servants of the Company".[4] The only measure he could devise for removing this 'want of government of the Europeans, the servants of the Company' was the establishment of the Supreme Court. How the Supreme Court contributed to the alleviation of 'the sufferings of the people' is well-known to all serious students of modern Indian history. Englishmen were accustomed to look to the Judiciary for protection against

1 Pemberton, *Lord North*, p. 171.

2 Pemberton, *Lord North*, p. 174.

3 Pemberton, *Lord North*, p. 176.

4 Pemberton, *Lord North*, p. 173.

the illegal highhandedness of the Executive ; they had no idea that a Judiciary created by defective legislation, hampered by the duty to enforce an alien legal system, and obsessed by exaggerated ideas of power and prestige might easily become an engine of oppression.[1]

Lord North deserves credit for realising that the affairs of the Company could not be placed on a proper footing unless the influence of the Proprietors could be curtailed and the position of the Directors made less dependent upon them. So he provided that instead of the entire Court of Directors being elected annually, six should be elected for one year, six for two years, six for three years, and six for the full term of four years. Longer tenure would make it possible for the Directors to shake off to some extent the influence of the Proprietors and bring to the executive that stability and strength which it had so long sadly lacked. In practice, the six Directors who retired each year were almost always re-elected for the following year ; thus the effect was, in the words of Kaye, "to constitute a body of thirty directors, of whom six, forming a sort of non-effective list, go out every year by rotation".[2] Another precaution taken by Lord North also failed to serve its purpose. The number of Proprietors entitled to vote was reduced by the provision that they must possess stock worth £1,000 (instead of £500) and have held it for at least twelve months. As a result 1246 of the smaller holders of stock were disqualified. This arrangement was intended to make the Court of Proprietors less chaotic and irresponsible and also to prevent the Company's servants returning from the East from gaining an excessive influence over the Directors. The authors of the Ninth Report of the Select Committee of 1781 observed, "The whole of the regulations concerning the Court of Proprietors relied upon two principles, which have often proved fallacious, namely, that small numbers were a security against faction and disorder, and that integrity of conduct would follow the greater property."

Lord North's Bill was severely criticised from different quarters. The City of London petitioned against it. Dowdes-

1 Document Nos. 7, 10, 12, 13, 14, 15.

2 *The Administration of the East India Company*, p. 123.

well described it as 'a medley of inconsistencies dictated by tyranny, yet bearing throughout each line the mark of ignorance'. Burke used strong words[1]. An elaborate summary of the objections urged against the Bill is found in the *Protest* of 13 Peers[2]. This *Protest* is a clear vindication of the Whig respect for rights of property, but we look in vain for any trace of anxiety for the good government of the Company's territories.

The principal defects of the Regulating Act may be briefly enumerated. In the first place, Warren Hastings could not work in harmony with the members of the Council[3]. Up to 1776 he was steadily outvoted and overruled. He wrote, "My situation is truly painful and mortifying, deprived of the powers with which I have been invested by a solemn Act of the Legislature,.......denied the respect which is due to my station and character,........and condemned to bear my share in the responsibility of measures which I do not approve........."[4]. It was only after Monson's death in September, 1776, that he was able, by means of his casting vote, to maintain his supremacy in the Council. After Clavering's death in August, 1777, Hastings's control over the Council was strengthened. Wheler at first voted with Francis, but Hastings had his casting vote. Sir Eyre Coote, who became Commander-in-Chief in 1779, did not follow Francis. Barwell retired in 1779, and Francis left India in November, 1780. Wheler now became more tractable, and Sir Eyre Coote was usually absent from Calcutta on military duties. Macpherson joined the Council in September, 1781, and Stables in November, 1782. At first Hastings's relations with them were satisfactory; but towards the end of his administration he complained, sometimes bitterly. It is clear that it was a mistake to make it obligatory for the Governor-General to act according to the decisions of the majority in the Council. This mistake was not rectified by Pitt's India Act. When Lord Cornwallis was appointed Governor-General, he made it a condition of accepting that post that his powers should be increased.

1 Document No. 6 (IV).
2 Document No. 6 (V).
3 Document No. 9.
4 Forrest, *Selections from...State Papers*, Vol. II, p. 279.

That demand was accepted by Pitt's Government, and in 1786 an Act[1] was passed which authorised the Governor-General in special cases to override the majority of the Council and act on his own responsibility. This exceptional power of the Governor-General was also recognised by the Charter Act of 1793.[2]

The relations of Lord Cornwallis with the Council were satisfactory.[3] When he went down to Madras to assume the command against Tipu Sultan, he was formally granted independent powers by the Council, and this illegal act was subsequently validated by Parliamentary legislation.[4] Lord Wellesley sometimes issued important orders without even informing the Council, and his Minutes were entered upon the consultations of meetings at which he was not present. This was one of the grounds on which he was censured by the Court of Directors. A modern writer has justified him on the ground that "Wellesley's relations with his Council were so cordial and close, that he had slipped into the habit of taking their assent for granted, knowing that it would be willingly yielded, and therefore that it was a waste of time to wait for it".[5]

Secondly, the provisions of the Regulating Act are 'obscure and defective' as to the jurisdiction of the Supreme Court.[6] No definite solution was provided for fundamental questions like the following : (1) How far could the Supreme Court question and settle the legality of acts performed and orders issued by the Governor-General in Council ? In Macaulay's words, the framers of the Regulating Act "had established two independent powers, the one judicial, and the other political ; and with the carelessness scandalously common in English legislation, had omitted to define the limits of either." (2) What law was the Court to administer ? Impey himself regretted the anomaly of his position[7]. (3) Who were British subjects within the mean-

1 26 Geo. III, c 16.
2 Sections 47-51, Document No 24. Also Document Nos. 22, 23.
3 Document Nos. 22, 20.
4 31 Geo. III, c. 40.
5 Roberts, *India Under Wellesley*, pp. 269-270.
6 Document Nos. 6, 7, 12.
7 See pp. 58-59.

ing of the Charter of the Supreme Court? Stephen says, "In one sense, the whole population of Bengal, Behar, and Orissa were British subjects. In another sense, no one was a British subject who was not an Englishman born. In a third sense, inhabitants of Calcutta might be regarded as British subjects, though the general population of Bengal were not."[1]

These anomalies led to a serious dispute between the Governor-General in Council and the Supreme Court. As early as 1774 Hastings wrote to a friend, "The court of justice is a dreadful clog on the government........"[2]. He was, however, prepared to co-operate with Impey. In 1776 the Governor-General prepared a plan for amalgamating the Supreme Court and the Company's Courts. At the same time he attributed the disputes to the majority on the Council.[3] But the Patna case (1777-1779) and the Kasijora case (1779-1780) revealed the final breach between the Supreme Court and the Government.[4] To put an end to the deadlock Hastings offered Impey the presidency of the *Sadar Dewani Adalat*.[5] This was a premature anticipation of the amalgamation of the Supreme Court with the *Sadar* Courts after the transfer of the government of India to the British Crown.

An amending Act of 1781, which was preceded by a Parliamentary enquiry into the administration of justice in Bengal, settled some of the questions involved in the disputes between the Supreme Court and the Government. Ilbert says, "The decision of Parliament, as expressed in the Act of 1781, was substantially in favour of the council and against the court on all points. Sir James Stephen argues that the enactment of this Act 'shows clearly that the supreme court correctly interpreted the law as it stood'. But this contention seems to go too far. A legislative reversal of a judicial decision shows that, in the opinion of the legislature, the decision is not substantially just, but must not necessarily be construed as an admission that the decision is technically correct."[6]

1 *Nuncomar and Impey*, Vol. I, p. 126.
2 Gleig, *Warren Hastings*, Vol. I, p. 471.
3 Document No. 10.
4 Document No. 13.
5 Document No. 14.
6 See Ilbert, *The Government of India*, pp. 55-58.

Thirdly, Section 9 of the Regulating Act invested the Supreme Government with imperfect control over the subordinate Presidencies. The half-hearted attempt to create a central authority for the Company's territories in India was bound to fail, for the latitude given to the subordinate Presidencies was wide and vague. That the system contemplated by Lord North was altogether unworkable was clearly proved by the trouble created by the Governments of Madras[1] and Bombay[2] during the administration of Warren Hastings. So Section 31 of Pitt's India Act[3] deprived the subordinate Presidencies of those loopholes which they had fully utilised for a few years. Even after this Lord Cornwallis[4] complained against John Holland, Governor of Madras. Lord Hobart[5], Governor of Madras, quarrelled violently with Sir John Shore. Lord Wellesley complained against the Madras Government. He held strong views about the control of Bengal over Madras and Bombay.[6] "The main-spring of the government of India," said he, "can never be safely touched by any other hand than that of the principal mover."[7] The Court of Directors censured him by saying that "the subordinate governments have been reduced nearly to the condition of provinces of Bengal."[8]

Within a few years it was generally recognised that the Regulating Act had completely broken down. Fox's Bills[9] tried, unsuccessfully, to inaugurate a new system. A British historian says, "The bill was a sincere and statesmanlike effort to deal with a great problem on comprehensive lines ; but George III, Pitt, and Thurlow, and the East India Company did not consider it on its merits.......Fox, not the imperial problem, was made the issue."[10] The unpopularity of the Fox-North coalition and

1 See A. P. Das Gupta, *The Central Authority in British India.*

2 See Chesney. *Indian Polity*, 3rd edition. p. 41.

3 Document No. 17.

4 Document No. 20.

5 See p. 180.

6 See pp. 150-151.

7 *Wellesley Despatches*, Vol. I. pp. 290, 528.

8 See Roberts. *India Under Wellesley*, pp 265-269.

9 Document No 16.

10 See Grant Robertson, *England Under the Hanoverians*, pp. 299-302.

the tactlessness of Fox ruined the Bills. Instead of taking the Company into confidence he offended it by referring to its bankruptcy. Moreover, all the Commissioners nominated were partisans of Fox or North. "If Fox and North had chosen the seven commissioners fairly from among all three parties, the mouths of gainsayers would have been stopped."[1]

Pitt's India Act[2] formed the basis of the Indian constitution till 1858. In his introductory speech Pitt compared his own Bill with Fox's proposal, as affording "as vigorous a system of control, with less possibility of influence,—securing the possessions of the East to the public, without confiscating the property of the Company; and beneficially changing the nature of this defective government without entrenching on the chartered rights of men." Ilbert points out that Pitt followed the principle adopted by Fox—"the principle of placing the Company in direct and permanent subordination to a body representing the British Government."[3] The powers of the Board of Control were nearly as extensive as those of Fox's Commissioners; but the Board had no patronage, and it was not an independent executive body. Unlike Fox's Commissioners, the members of the Board were linked up with the Ministry of the day, the two most important members at least changing with each Ministry. Pitt kept the Directors satisfied with patronage, keeping the ultimate direction and control in the hands of the Ministers. His biographer observes, "While wielding despotic authority in India, the new Viceroy was but an adjunct of the British constitutional machine. It is perhaps the highest of Pitt's achievements that he saw how to combine two ideals of government, the oriental and the occidental, in a way that conduced to vigour of action in Bengal and did not impair popular progress at home. While investing the real ruler of India with powers far greater than those wielded by Warren Hastings, he subordinated them to the will of King and Parliament........Has any other statesman succeeded in the task of linking an oriental autocracy with the ancient parliamentary system of a Teutonic race?"[4]

1 J. Holland Rose, *Life of William Pitt*, Vol. I, p. 146.
2 Document No. 17
3 *The Government of India*, p. 62.
4 J. Holland Rose, *Life of William Pitt*, Vol. I, pp. 223-224.

Fox's criticism[1] of Pitt's Bill was statesmanlike. The difficulties pointed out by him were felt by Lord Palmerston[2] more than seventy years later. There were many occasions of friction between the Court of Directors and the Board of Control.[3] Lord Curzon observed, "Had a committee been assembled from the padded chambers of Bedlam, they could hardly have devised anything more extravagant in its madness, or more mischievous in its operation. To it must be attributed many of the astounding errors and contradictions that characterised our Indian policy at that time."[4] Yet the 'cumbrous and dilatory procedure' of Pitt's Act and its 'elaborate system of checks and counter-checks' worked tolerably well in practice, except on rare occasions when headstrong men like the Earl of Buckinghamshire and Lord Ellenborough created troubles.[5] It is significant that the Company itself justified this system in its swan song.[6]

Charters, 1793—1853

Pitt's India Act was followed by the Charter Act of 1793.[7] No great constitutional change was introduced by this statute of consolidation.

The amending Act of 1781 contained an important provision regarding legislation. It empowered the Governor-General and Council 'from time to time to frame regulations for the provincial courts and councils'. These regulations might be disallowed or amended by the King in Council within two years. An Act of 1797 expressly sanctioned the exercise of legislative power by the Government of Bengal. This Act provided that the provincial courts of justice would be bound by the regulations framed and issued by the Governor-General in Council. Similar powers of making regulations were given to the Governors and Councils of Madras and Bombay by an Act of 1807.

1 Document No. 17 (III).

2 See *Indian Constitutional Documents*, Vol. II, Document No. 1.

3 Document No. 27. See also Ilbert, *The Government of India*, pp. 68-69.

4 *British Government in India*. Vol. II, p. 69.

5 Document Nos. 27, 45. See C. H. Philips, *The East India Company*.

6 Document No. 48.

7 Document Nos. 21, 24.

An Act of 1800 provided for the constitution of a Supreme Court at Madras.

In 1808 a Committee[1] of the House of Commons was appointed to inquire into the financial difficulties of the Company which were largely due to the policy of war and annexation pursued by Lord Wellesley. The Continental System introduced by Napoleon had closed the European ports to British trade, and it was no longer found possible to continue the Company's monopoly of trade with India. The supporters of the Company argued, at first, that if its trade profits were taken away its revenues would not be sufficient to carry on the government of its territories. It was found that the trade profits were derived mainly from the tea trade. So the Company was allowed to retain its monopoly of the tea trade and also the trade with China. The Company then dwelt on the political dangers likely to arise from an unlimited resort of Europeans to India. It was decided that Europeans would be allowed to come to India only under a strict system of licences. The proposals submitted by the Government to Parliament, after long consultations with the Company, were embodied in 13 resolutions,[2] which formed the basis of the Charter Act of 1813. The preamble formally asserted "the undoubted sovereignty of the Crown of the United Kingdom........in and over" the Company's territories.[3] The Act granted the Indian possessions and revenues to the Company for a further term of twenty years. The tea trade and the China trade were reserved to the Company, but the general India trade was thrown open, subject to various restrictions. The powers of superintendence and control exercised by the Board of Control were increased and further defined. The patronage of the Company was preserved, subject to the approval of the Crown in the case of the higher offices, and of the Board of Control in certain cases.

1 This Committee issued the famous *Fifth Report* in July, 1812.

2 Printed in an Appendix, Mill and Wilson's *History of British India*, Vol. VII.

3 See C. H. Philips, *The East India Company*, pp. 190-191 ; also, *Cambridge History of India*, Vol. V, p. 594.

The sovereignty of the Crown had been clearly reserved in the Charter of 1698.

An Act of 1823 provided for the establishment of a Supreme Court at Bombay.

The restrictions on Indian trade imposed by the Charter Act of 1813 were gradually removed. A consolidating Act of 1823 allowed trade to be carried on in British vessels with all places within the limits of the Company's Charter except China.

An Act of 1824 transferred the island of Singapore to the Company. It was placed under the Colonial Office by an Act of 1866.

Like the Charter Act of 1813, the Charter Act of 1833 was preceded by detailed inquiries into the administration of India. It[1] introduced important constitutional changes. The provisions of the Act should be studied with special reference to Macaulay's speech in the House of Commons[2] and the Despatch of the Court of Directors.[3] This important enactment was directly connected with the triumph of Whiggism in England. Macaulay himself was Secretary to the Board of Control and James Mill was the Examiner of Correspondence at the India House. Their influence may be traced in the Act itself and also in the explanatory Despatch. Macaulay's remarks on Indian laws cannot be understood except against the background of Benthamite theories on legislation and codification. Macaulay's peroration about 'an Empire exempt from all natural causes of decay' is almost an echo of self-complacent mid-Victorian Liberalism.

It is interesting to notice the great importance assigned by the framers of the Charter Act of 1833 to the question of the 'free ingress' of Europeans into India.[4] With this question were connected the centralisation of legislation, judicial changes and the removal of the disqualification of Indians for appointments in the Company's service. The Charter Act of 1813 had allowed Europeans to come to India under a strict system of licences. That restriction was now removed, but adequate precautions were taken to minimise the evils likely to arise from the 'free ingress' of Europeans of all classes into India.

1 Document No. 39
2 Document No. 40.
3 Document No. 41.
4 Document No. 41.

An Act of 1835 suspended the provisions of the Charter Act of 1833 relating to the division of Bengal into two Presidencies. This suspension was continued by the Charter Act of 1853. The Act of 1835 provided for the appointment of a Lieutenant-Governor for the North-Western Provinces. The first appointment was made in 1836. The plan of creating Executive Councils for Bengal and the North-Western Provinces was given up.

The Charter Act of 1833 had allowed the Company to hold the territorial possessions in India for twenty years 'in trust for His Majesty, his heirs and successors.' Twenty years later another Charter Act[1] continued the same arrangement without fixing any definite term : the Company was to govern India until Parliament should otherwise direct. The creation of a Legislative Council was the most interesting provision of this Act. Lord Dalhousie and Sir Charles Wood held different views about the functions and position of the Council[2]. It is interesting to speculate whether political progress in India would have been hastened if Sir Charles Wood had decided to recognise the Legislative Council as an 'Anglo-Indian House of Commons for the redress of grievances, to refuse supplies, and so forth.'

An Act of 1854[3] empowered the Governor-General in Council, with the sanction of the Court of Directors and the Board of Control, to take any part of British territory under his immediate authority and management and to provide for its administration. This provision resulted in the establishment of Chief Commissionerships for provinces like Assam, the Central Provinces and Burma. But the title of Chief Commissioner was not directly recognised by Act of Parliament till 1870.

The Act of 1854 also empowered the Government of India, with the sanction of London, to define the limits of the different provinces in India. The Governor-General in Council was given all the residuary authority not transferred to the Local Governments of the provinces into which the old Presidency of Bengal

1 Document No. 41

2 Document Nos. 45, 46. See Lee-Warner, *Life of Dalhousie*, Vol. II, pp. 236-245.

3 17 & 18 Vict. c. 77.

had been divided. The Governor-General was no longer to bear the title of Governor of Bengal.

Transfer of India to the Crown

The transfer of the Government of India from the Company to the Crown was the logical result of the clear declaration of the sovereignty of the Crown in the Charter Acts. The occasion of the transfer was provided by the Mutiny, which showed that 'Double Government' and conflict of responsibility could no longer continue[1]. It was, however, as Lord Derby pointed out, no more than a formal change : "………in point of fact, the transfer of authority to the Crown is more nominal than real, because, although the Court of Directors have been in a position to exercise certain powers of obstruction and delay, I believe that, with the single exception of the power of recalling the Governor-General, there was no single act which they were enabled to perform without the assent of the President of the Board of Control."[2] In vain did the Company invite enquiry into Indian administration and declare, in the eloquent words of John Stuart Mill, that its government "has been not only one of the purest in intention, but one of the most beneficent in act, ever known among mankind."[3] Pitt's India Act, and the steadily expanding authority of the Board of Control, had converted the Company into 'a quasi-state department.' Resistance was useless when the State asserted its final claim.

Civil Service[4]

Elizabeth's Charter empowered the Company to "make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances, as to them………..shall seem necessary and convenient for the good government……..of all factors, masters, mariners, and other officers, employed or to be employed in any of their voyages." The Charter of 1698 granted similar powers, and added the power of inflicting reasonable punishment by imprisonment, fines, or the like for brea-

1 See Palmerston's speech : *Indian Constitutional Documents*, Vol. II, Document No. 1.

2 *Indian Constitutional Documents*, Vol. II, Document No. 3.

3 Document No. 48.

4 See A. K. Ghosal, *Civil Service in India*.

ches of the Company's enactments. Thus the disciplinary control of the Company over its own servants was confirmed and strengthened.

The servants of the Company were usually appointed as 'apprentices' or 'writers' at or about the age of sixteen and worked their way up ordinarily by seniority. The candidates were selected by the Court of Directors upon their own petition or request. In 1731 it was "ordered that in future all petitions for employment in the Company's service, either at home or abroad, be presented by some of the gentlemen in the Direction." Thus originated the system of patronage which was looked upon as an important privilege of the Court of Directors. Naturally the Directors preferred their friends and relatives to unknown but better candidates. "The Service became practically the monopoly of certain families." The emoluments of the Company's servants were not attractive, but they usually got free quarters and various kinds of allowances. There was no security of tenure, and suspensions and dismissals were sometimes made on flimsy grounds. Although trade was the main pre-occupation of the civil servants in the early days of the Company, they had to exercise legislative, judicial and administrative functions on a small scale.

When the Company became a territorial Power, two problems arose : Should patronage belong to the Company or to the Crown ? How could clerks serving a commercial corporation be taught to govern an expanding empire ?

The Acts of 1773, 1784, 1793[1] and 1813 left the Company's right of patronage undisturbed. In 1833 an attempt was made to introduce a system of modified competition; but the Directors cleverly managed to retain their privilege[2]. By the Charter Act of 1853 the right of patronage was taken away from the Court of Directors, and it was provided that appointments would be made in accordance with regulations framed by the Board of Control. In 1854 regulations were framed by a Committee under the presidency of Lord Macaulay[3]. These regulations threw the

1 Document No. 24.

2 See p. 312.

3 Document No. 42 (II).

covenanted Civil Service open to general competition. By an Act of 1855 the Haileybury College, where the Company's civil servants were trained, was closed on January 31, 1858.

The problem of transforming 'factors' into responsible administrative and judicial officers was far more difficult. Clive was fully conscious of the temptations open to the Company's servants[1], but his reforms were not really successful. Warren Hastings was recklessly generous in his disposal of patronage ; no doubt his purpose was to retain control over the Company through favours done to proprietors' nominees. He enormously increased the cost of the civil establishment by creating highly paid posts[2]. Such a system was not likely to minimise corruption and increase efficiency.

The reforms of Lord Cornwallis were sincerely meant and really effective. He steadily refused to make improper appointments even to gratify his masters[3]. He eliminated unnecessary staff, provided for the payment of proper salaries, and curtailed unauthorised profits. Still his system had two serious defects. In the first place, his distrust of Indians not only increased the cost of administration by the wholesale Europeanisation of the service ; it also degraded Indian character[4]. Secondly, he failed to understand that mere removal of corruption could not increase the efficiency of the Civil Service. The equipment of the Civil servants left much to be desired. It is probable that Lord Cornwallis was vaguely conscious of this difficulty. The necessity of training the Company's servants in Indian languages was recognised in 1799, and it was notified to the writers that "the Governor-General will not be inattentive to the progress which they make in acquiring the country languages".

Although Lord Wellesley is remembered chiefly as one of the most successful of the 'Senatorial Proconsuls' whom Britain sent to govern her Indian territories, yet it is being gradually recognised that his regime constitutes a landmark in the history

1 Document No. 2.

2 Keith, *A Constitutional History of India*, pp. 91-92.

3 Document No. 19.

4 Document No. 28.

of the development of the British Civil Service in the country[1]. His Notification dated December 21, 1798, by which certain offices were closed to those servants of the Company who failed to pass an examination in the laws and regulations and in the languages, was the logical culmination of the step taken by Lord Cornwallis. In this connection it is necessary to remember that the establishment of the Fort William College was by no means Lord Wellesley's sole contribution to the growth of a better and stronger administrative system. The Fort William College provided the necessary apparatus for giving practical effect to the scheme of examination contemplated in 1798. It is as much possible to exaggerate the importance of the College as to belittle it. After all, even the most satisfactory arrangement about linguistic and legal training cannot, by itself, create an efficient and benevolent Civil Service capable of governing a rapidly expanding Empire in a strange land. A Civil Service can hardly be great unless it is convinced that it has a great cause to serve, a great mission to uphold. That ennobling feeling of doing something great the Company's servants derived from Lord Wellesley's robust imperialism.

In a Minute[2] dated July 10, 1800, Lord Wellesley declared, "The stability of that Empire.......must be secured by the durable principles of internal order; by a pure, upright, and uniform administration of justice; by a prudent and temperate system of revenue........". There is hardly anything new in this statesmanlike declaration. The necessity of administrative consolidation had been felt by Warren Hastings and Lord Cornwallis, and Lord Wellesley did not add anything new to the structure built up by them. But the civil servants breathed a new atmosphere as soon as the 'Senatorial Proconsul' landed in India, and the new order proved more and more attractive to them as time went on. In the first place, the disturbing effects of that well-known declaration in Pitt's India Act—that "to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour and policy of this nation"—evaporated in the whirlwind of aggression set in

1 Document Nos. 25, 26.

2 Document No. 26.

motion by the new Governor-General. A Civil Service not yet cut off from its commercial association, and constantly reminded by the authorities that it was governing a territory which had been acquired by 'measures repugnant to the........... honour' of England, would hardly be expected to be inspired with any lofty ideal of efficiency and benevolence. But Lord Wellesley silently, almost contemptuously, set aside the declaration of 1784 and launched upon a career of deliberate aggression. Lest any one should think that the policy of annexation and extension of suzerainty was nothing more than a temporary phenomenon, he observed in his Minute dated July 10, 1800, "Duty, policy and honour require, that it should not be administered as a temporary and precarious acquisition........It must be considered as a sacred trust, and a permanent possession."[1]

In the second place, Lord Wellesley allowed the Civil Service time to settle down. For twenty years (1773—1793) Warren Hastings and Lord Cornwallis had introduced changes after changes. It was, doubtless, a necessary process: the pioneers were still groping in the dark and the new system naturally took time to crystallize. But, viewed from the standpoint of the Civil Service, so many changes coming in rapid succession made its position uncomfortable and uncertain. New posts were created and abolished in the course of a few years; changes in Regulations were so frequent and bewildering that it was hardly possible to understand them. Administrative experiments are generally regarded by civil servants as unnecessary disturbances, especially if they come with unexpected rapidity. Fortunately, a period of comparative quiet began after the departure of Lord Cornwallis, and Lord Wellesley did nothing to disturb Sir John Shore's policy of non-intervention in the sphere of internal administration. The Civil Service found time to adjust itself to the Hastings-Cornwallis system. Thus Sir John Shore and Lord Wellesley may be said to have contributed, although indirectly, towards the consolidation of that system.

The policy of selecting the Governor-General from the ranks of English statesmen, begun with the appointment of Lord

1 Document No. 26. See also Document No. 28.

Cornwallis and confirmed by that of Lord Wellesley, opened to the Civil Service a new sphere of activity and usefulness, although it removed the highest post in British India from the scope of its ambition. A Governor-General like Warren Hastings or Sir John Shore, who had long and varied experience of administration in British India, possessed intimate knowledge of all problems and was never dependent on what we now call "expert advice." Under such a Governor-General the ablest of the civil servants can hardly hope to influence policy ; he is expected merely to give effect to the directions emanating from the centre. Under such a system, one able and fortunate civil servant may rise to the highest post and influence history ; but for the Civil Service as a whole it leaves nothing more important than routine work. But under a Governor-General like Lord Cornwallis or Lord Wellesley, who is ignorant of local conditions and, therefore, necessarily dependent on 'expert advice', the Civil Service may exercise enormous influence on the shaping of policy. In recent times the Indian Civil Service has undoubtedly played this part. Probably this tradition took a somewhat definite shape in the days of Lord Wellesley.

Lord Wellesley's aggressive policy opened to the Civil Service a new avenue of employment and distinction. "Closer relations with the 'country powers' called into existence a new class of diplomatists, destined to be famous under the style of Residents ; while frequent hostilities taught them their business in the most practical fashion".[1] The diplomatic training of the Company's servants really began under Lord Cornwallis, but Lord Wellesley extended its scope and importance ; a temporary expedient became an integral part of the administrative machinery. The origin of the so-called 'Political Department' of the Government of India is to be traced to the policy of Subsidiary Alliance. In this connection it is also necessary to remember that Lord Wellesley sent diplomatic Missions to countries outside India[2] and trained some servants of the Company in international diplomacy. The services of men trained

1 J. S. Cotton, *Mountstuart Elphinstone*, p. 11.

2 Malcolm went to Persia in 1799. Lieutenant Hill, Colonel Symes and Lieutenant Canning went to Burma.

by him were utilised by Lord Minto. Indeed, early training in the diplomatic sphere was best calculated to develop personality as well as administrative capacity. "Unhampered by the telegraph, or even by regular posts, the young diplomatists were compelled to rely on their own resources, and often to decide without instructions upon measures of supreme importance. The sense of responsibility, thus early developed, served them in good stead when emergencies arrived."[1]

Lord Wellesley was certainly an adept in the art of selecting promising youngmen for responsible posts. Munro, Malcolm, Metcalfe, Elphinstone—great names in British Indian history—practically began their careers under him, and from him they derived the inspiration which shaped them in their impressionable years. Malcolm says, "His great mind pervaded the whole : and a portion of his spirit was infused into every agent whom he employed."[2] Through his agents his spirit descended to the Company's servants who came to India long after his departure. "From Malcolm's example", we are told, "his young assistant Outram learned how to pacify Central India by training the savage tribe of Bhils........"[3]. If Lord Hastings completed the task of empire-building left unfinished by Lord Wellesley, he found in the civil and military officers trained under the latter able instruments and sagacious advisers.

By the time of Lord William Bentinck the Company's Civil Service had come to be recognised as an 'exclusive order'[4] ; the bureaucracy had already developed its peculiar characteristics.

The annexation of new territories and the growing complexity of administration made it necessary to modify the Cornwallis system and to admit Indians to subordinate offices.

1 J. S. Cotton, *Mountstuart Elphinstone*, p. 12. Malcolm remarks about Lord Wellesley, "......those he employed in the execution of his measures,......he always relieved from every species of vaxatious counteraction and delay that could arise from the untimely intrusion of official forms, or the unreasonable pretensions of inferior authorities." (*Political History of India*, Vol. I, p. 331).

2 *Political History of India*, Vol. I, p. 331.

3 J. S. Cotton, *Mountstuart Elphinstone*, p. 13.

4 Document No. 36 (II).

Probably the statesmanlike views of far-sighted Anglo-Indians like Sir Thomas Monro[1] and the growing tide of Whiggism in England also contributed to this change. The Charter Act of 1833[2] removed the colour bar regarding appointments, but the Despatch of the Court of Directors[3] pointed out that it was not intended to 'break down or derange the scheme of our Government through the instrumentality of our regular servants.' Macaulay's glowing tribute to 'that wise, that benevolent, that noble clause'[4] meant no substantial concession to the Indians.

The Company and the Indian States

In all discussions about the relations of the Indian Princes with the Paramount Power we come across the elusive phrase, "treaty rights". It is well to remember that, apart from 'engagements' and 'sanads,' there were only 40 States with *treaties*[5]. All these treaties, except one, were concluded during the period 1794-1846. A proper understanding of the treaties requires a thorough acquaintance with the political history of the period in which they were concluded. The treaties printed in the present work are illustrative of the demands made by the Company upon its Indian allies. For want of space we have excluded all treaties with States which did not exist at the end of British rule in India ; but the historical evolution of Paramountcy cannot be properly understood without a thorough study of the treaties, for instance, with the Nawabs of Oudh and the Carnatic.

1 Document No. 28.

2 Document No. 39.

3 Document No. 41.

4 Document No. 40.

5 Rampur (1794), Mysore (1799, 1881, 1913), Hyderabad (1800, 1853), Alwar (1803), Gwalior (1804, 1844), Baroda (1805), Bharatpur (1805), Travancore (1805), Dholpur (1806), Cochin (1809), Kolhapur (1812), Rewa (1812), Orchha (1812), Sikim (1814), Kotah (1817), Karauli (1817), Tonk (1817), Samthar (1817), Bhopal (1818), Bikaner (1818), Datia (1818), Dewas Senior and Junior (1818), Indore (1818), Jaipur (1818), Jaisalmer (1818), Jodhpur (1818), Kishengarh (1818), Partabgarh (1818), Udaipur (1818), Bundi (1818), Cutch (1819), Sawantwari (1819), Dhar (1819), Sirohi (1823), Bahawalpur (1838), Khairpur (1838), Jhalawar (1838), Kashmir (1846), Kalat (1876).

See Lee-Warner, *The Native States of India*, pp. 53-57

Sir William Lee-Warner observes, "The key-note of the foreign policy of the Company towards the princes of the country from 1757........to the close of Lord Minto's rule as Governor-General in 1813, was one of non-intervention or limited liability........Beyond the ring-fence of the Company's dominion they avoided intercourse with the chiefs.... When the events of these fifty-six busy years are called to mind, the palpable anxiety of the Company to avoid both annexation and alliances stands out in the clearest relief."[1] It is difficult to accept this view in its entirety.

It is true that Oudh, the most important State in northern India within the sphere of the Company's influence, was not annexed after the battle of Buxar in 1764, and Shuja-ud-daula was allowed to absorb Rohilkhand with the Company's assistance. But the process of bringing Oudh under the control of the Company began after the battle of Buxar and reached its culmination during the administration of Sir John Shore, whose adherence to the policy of non-intervention in the case of the Nizam (illustrated in the battle of Khurdah) did not prevent him from regulating succession, and of Lord Wellesley, who seized large and fertile tracts in the Nawab's territories described by Vincent Smith as 'some of the most favoured regions in India.' The First Anglo-Maratha War resulted in the annexation of Salsette ; it is doubtful whether the Company was then strong enough to absorb more. Nor is Sir William Lee-Warner correct in saying that 'the allies of the British derived the main advantage' from the four Anglo-Mysore Wars. By the Third Anglo-Mysore War the Company obtained Malabar, Coorg, Dindigul and Baramahal. By the Fourth Anglo-Mysore War the Company annexed Kanara and left to the dependent Hindu Raja[2] of new Mysore territory which was 'completely surrounded by the British dominions and cut off from access to the sea'. The terms of peace granted by Lord Wellesley to Sindhia[3] and Bhonsla are described as

1 *The Native States of India.* pp. 58-59.

2 Document Nos. 49 53 (II).

3 Document No. 51.

'conspicuous for their moderation'; but the Company acquired Orissa as well as Delhi and Agra. He also extinguished the separate existence of the Carnatic[1], Tanjore and Surat. The Cis-Sutlej States were brought under British protection by Lord Minto in 1809. In the same year a treaty was concluded with Sind and long before the Ellenborough-Napier era Ranjit Singh was prevented from casting his covetous eyes on the Indus valley. These developments cannot be explained by the theory 'of limited liability'. Indeed, the large-scale annexations during the administration of Lord Hastings were the logical culmination of the trends of the preceding period. If the Company had no deliberate plan for the annexation of Princely territories, its 'anxiety....to avoid....annexation' was hardly a really active factor in its policy.

It was during the administration of Lord Wellesley that the first phase of British expansion in India reached its climax and the Company 'advanced from the position of *primus inter pares* to an assertion of superiority'. He himself wrote in 1804, "A general bond of connexion is now established between the British Government and the principal states of India which render it the interest of every state to maintain its alliance with the British Government........and which secure to every state the unmolested exercise of its separate authority within the limits of its established dominion, under the general protection of the British power"[2]. This was the logical result of Lord Wellesley's bold and broad approach to the problem of the Princely States. He gave a definite shape to the system of Subsidiary Alliance, which had been in practical operation in the Carnatic and Oudh for many years. The consolidation of British ascendancy necessarily curtailed the external sovereignty of the States. At the same time it brought about a fundamental change in their internal organisation and general outlook. The evils inherent in the system of Subsidiary Alliance were extended to new States, and in the days of Lord Hastings and his successors they became fairly universal.

1 Document No. 53 (III).

2 *Wellesley's Despatches*, Vol. IV. p. 177.

As Sidney Owen observes, "the native Prince being guaranteed in the possession of his dominions, but deprived of so many of the essential attributes of sovereignty, sinks in his own esteem, and loses that stimulus to good government, which is supplied by the fear of rebellion and deposition. He becomes a *roi faineant*, a sensualist, an extortionate miser, or a careless and lax ruler.......The higher classes, coerced by external ascendancy, in turn lose their self-respect, and degenerate like their master ; the people groan under a complicated oppression which is irremediable. Thus, in spite of the Resident's counsels and attempts to secure good government, the back of the State, so to speak, is broken ; the spirit of indigenous political life has departed : the native community tends to dissolution ; and annexation is eventually the inevitable remedy for its helplessness and chronic disorders". These remarks are well illustrated by the history of the States till the days of Lord Dalhousie.

According to Sir Willam Lee-Warner, the policy of subordinate isolation[1] was pursued during the period 1813-1857. He remarks that the treaty with Udaipur[2] is 'a document typical of Lord Hastings' treaties' with *existing* States. The treaty with Satara (1819)[3], on the other hand, illustrates his policy with regard to *newly created* States. In the former case the stipulation for 'subordinate co-operation' was modified by recognition of the Prince's absolute rule over 'his own country'. In the latter case the Prince was required to hold the territory granted to him 'in subordinate co-operation with the British Government, and to be guided in all matters by the advice of the British agent'. This distinction between *existing* States and *newly created* States was not, however, systematically followed. Provision was made for intervention in internal affairs in the case of some *existing* States in Rajputana. Some Princes were required "at all times (to) attend to the advice of the officer of the British Government in the administration of their affairs, and act in conformity thereto".[4]

1 *The Native States of India*, Chapter IV.
2 Document No. 57.
3 Document No. 63 (IV).
4 Document No. 58. See also p. 372, *f.n.*

It would not be quite correct to think that the Company's right of intervention in the affairs of States connected with it by Subsidiary Alliances was based only on the specific words of treaties. As a general rule the Supreme Government wanted to avoid intervention[1]; but there were various circumstances under which intervention could not be avoided. Intervention in its extreme form—annexation—was in some cases, as in Coorg and Oudh, the only remedy for maladministration. Sometimes intervention in the form of interference in internal administration was the result of local British policy, *i.e.*, the policy pursued by a Resident who might be over-zealous or sincerely anxious to secure benevolent administration. In such cases the personal factor was naturally predominant. Reference may be made to the largest State, Hyderabad, where the 'absolute' control of the ruler was recognised by treaty.[2] The British Government, it was declared categorically, "have no manner of concern with any of his Highness's children, relations, subjects, or servants with respect to whom His Highness is absolute". How did this declaration work in practice? Metcalfe's biographer says, "He (*i.e.*, the Nizam) had tried to assert himself against a former Resident, Captain Sydenham; and had been snubbed so effectively that he threw up all attempt to rule, retiring into a seclusion which he practically never violated, holding no durbars, granting on interviews, and leaving everything to his British master and that master's tools, who (as he said) had relieved him of his government and made it entirely their business. He met all complaints, if they reached him at all. with this despairing answer "[3] Intervention in violation of the treaty of 1800 did not, however, secure good government to the people of Hyderabad. Metcalfe's attempt to 'cleanse the Augean stables' failed,[4] and Hyderabad illustrated all the evils described by Sidney Owen as inevitable consequences of the system of Subsidiary Alliance. In spite of his repugnance

1 Lee-Warner, *The Native States of India* pp. 125-126. See Document Nos. 54, 59, 62.

2 Document No. 50.

3 Thompson, *Life of Metcalfe*. pp. 189-190.

4 Thompson, *Life of Metcalfe*. Chapter XIII.

to the annexation of "the independent" States and to interference in their affairs[1] Lord Dalhousie had to annex Berar.

Indeed, instances of intervention by the British Government in theinternal affairs of Indian States in spite of treaty provisions to the contrary may be multiplied. In 1818 Lord Hastings concluded a treaty with Jaipur, one of the articles of which ran as follows: "The Maharaja and his heirs and successors shall remain absolute rulers of their territory.... .....". Tod says that soon after the conclusion of this treaty the British Government interfered in regulating the succession to the *gadi* of Jaipur and also in controlling the finances. His remarks are significant: "While we deem ourselves justified in interfering in the two chief branches of government, the succession and finances, how is it possible to avoid being implicated in the acts of the Government functionaries, and involved in the party views and intrigues of a court........? While there is a resident agent at Jeypur, whatever his resolves, he will find it next to impossible to keep aloof from the vortex of intrigue."[2]

Indeed, Subsidiary Alliance really placed the rulers of Princely India as well as the Company in a very anomalous and difficult position. Lord Hastings and Lord Dalhousie thought that maladministration was no justification for intervention[3]; yet maladministration in Hyderabad, resulting in the Nizam's inability to discharge his financial obligations to the Company, compelled Lord Dalhousie to annex Berar. Lord Ellenborough felt that the British Government "is deeply responsible to Providence for the exercise of........power in such manner as may most conduce to the happiness of all tribes and nations within the limits of India, under whatever form of rule they may severally be placed."[4] This 'duty' could not be performed without interfering in the internal affairs of the States in violation of the treaties.

It may even be suspected that the treaties would have been

1 See p. 378.

2 *Annals of Amber*, Chapter IV.

3 Document Nos. 54, 62.

4 Document No. 59

violated more frequently if the Company could create the necessary machinery for the direct administration of the States. The treaties were by no means the only obstacle to intervention. As Lee-Warner points out, "The Company had no public servants whom it could spare for the work of supervising reforms in the principalities." The military forces at the disposal of the 'Government of India were insufficient ; it could not command 'the powerful support of railways'. Thus the physical instruments of power were totally inadequate for controlling directly a larger part of India. Moreover, public opinion either in British India or in the States was not yet strong enough to serve as an ally of an enlightened Government determined to raise the States to the level of British India. For all these reasons the East India Company could not evolve any consistent policy regarding intervention (in the interest of good administration) in the internal affairs of the States.

But in practice cases of intervention were so frequent that the internal autonomy of the States failed to survive the transfer of India to the Crown. In his despatch dated the 30th April, 1860, Lord Canning laid down the principle that flagrant misgovernment must be prevented or arrested by timely exercise of intervention. "With this acceptance of the necessity of intervention modern political practice may be said to have begun". The Report of the Butler Committee stated the position in the following words : "The relationship of the Paramount Power with the States is not a merely contractual relationship, resting on treaties made more than a century ago. It is a living, growing relationship shaped by circumstances and policy, resting, as Professor Westlake has said, on a 'mixture of history, theory and modern fact'." The origin of this 'mixture of history, theory and modern fact' must be traced to the period covered by this volume.

Annexation was the most extreme form of intervention, and the policy of annexation reached its climax in the middle of the century. Sir William Lee-Warner has tried to justify the morality and legality of Lord Dalhousie's annexations.[1]

The Native States of India, pp. 152-156. See also Lee-Warner's *Life of Dolhousie*, Vol. II.

The cases of Coorg and Oudh proved that neither treaty nor advice could cure oppression. "They were the object-lessons which induced him to welcome lapses as cutting the knot which political practice had failed to untie." The legal validity of the Doctrine of Lapse was based on the fundamental distinction between private property and a chiefship which is recognised by Hindu law.[1] On this point we should also take special note of Lord Dalhousie's classification of States.[2] There is no doubt, however, that the *political* inexpediency of Lord Dalhousie's policy was demonstrated by the 'Mutiny'. So the Queen's Proclamation[3] assured the Princes that their 'Rights, Dignity and Honour' would be scrupulously respected, and the 'Adoption *Sanads*'[4] granted by Lord Canning brought the era of annexations to an end.

1 See *Cambridge History of India*, Vol. V, pp. 581-587.
2 Document No. 63 (III).
3 *Indian Constitutional Documents*, Vol. II, Document No. 3.
4 *Indian Constitutional Documents*, Vol. II. Appendix.

INDIAN CONSTITUTIONAL DOCUMENTS

1. GROWTH OF THE EAST INDIA COMPANY'S TERRITORIAL POWER IN BENGAL[1], 1757-1766.

[The battle of Plassey took place on June 23, 1757; on June 28 Clive conducted Mir Jafar to the *masnad* at Murshidabad. Describing Mir Jafar's position after Plassey Vansittart wrote, "We have now a Nabob of our own making, and absolutely dependent upon us for his establishment and future security". Thus arose 'a conflict between the person invested with the sole rights of administration in the province, and the corporation controlling the only efficient military force therein'. Mir Jafar granted to the Company *zamindari* rights in the district of 24 Parganas adjoining Calcutta, in addition to commercial privileges. Clive left Bengal early in 1760; he was temporarily succeeded by Holwell whom Vansittart replaced in July, 1760.

Mir Jafar

Meanwhile Mir Jafar had alienated the Calcutta Council by his intrigues with the Dutch and the *Shahzada*—later Emperor Shah Alam II—and also by his failure to satisfy the financial demands of the Company. So he was removed and his son-in-law, Mir Qasim, was placed on the *masnad* in October, 1760. Mir Qasim granted to the English the districts of Burdwan, Midnapore and Chittagong for the maintenance of their troops and also agreed to pay off the outstanding debts of his predecessor to the Company. But the question of internal trade led to a war between Mir Qasim and the Company, which finally resulted in the former's downfall. Mir Jafar was restored. On July 10, 1763, he signed a new treaty by which he agreed to limit the strength of his army, to receive a permanent Resident at his *durbar*, and to levy no more than 2½ per cent. on the English trade in salt. The grant of the three districts was confirmed.

Mir Qasim

After Mir Jafar's death early in 1765 his son Najm-ud-daula was recognised as his successor on condition of his appointing a Minister nominated by the English, and agreeing not to displace him without their approval. As a result of this arrangement "the Nawab survived as a figurehead, in

Najm-ud-daula

1 See Firminger, *Historical Introduction to the Bengal Portion of the Fifth Report*, Chapters I, VI, VII.

Saif-ud-daula

whose name administration was conducted by a nominee of the English, but who of himself could do nothing". After the grant of *Dewani* by Shah Alam II the puppet Nawab, Saif-ud-daula, left the military control of his provinces entirely to 'the discretion and good management' of the Company.]

I. Clive to Calcutta Council, June 30, 1757.

Company wants trade only.

In the afternoon I waited on Jafar Ali Khan,[1] being escorted to him by his son....... ....I only attempted to convince them, that............we should not anyways interfere in the affairs of the Government, but leave that wholly to the Nawab ; that as long as his affairs required it, we were ready to keep the field, after which we should return to Calcutta and attend solely to commerce, which was our proper sphere and our whole aim in these parts.

II. Treaty with Mir Jafar, 1757 : Article 9.

Twenty-four Parganas

All the land lying to the south of Calcutta, as far as Culpee[2], shall be under the zemindary of the English Company ; and all the officers of those parts shall be under their jurisdiction. The revenues to be paid by them (the Company) in the same manner with other zemindars.

III. Treaty with Mir Qasim, 1760 : Article 5.

Burdwan, Midnapore, Chittagong

For all charges of the Company and of the said Army, and provisions for the field, etc., the lands of Burdwan, Midnapore, and Chittagong shall be assigned, and *sunnuds* for that purpose shall be written and granted. The Company is to stand to all losses and receive all the profits of these three countries, and we will demand no more than the three assignments aforesaid.

IV. Treaty with Mir Jafar, 1763 : Article 2.

I do grant and confirm to the Company for defraying the expenses of their troops, the *chucklas*[3]

1 Mir Jafar.

2 Kulpi (now in the district of 24 Parganas, West Bengal).

3 *Chakla*, i. e. a revenue division.

of Burdwan, Midnapore, and Chittagong, which were before ceded for the same purpose.

V. Treaty with Najm-ud-daula[1], February, 1765 : Articles 2-4.

2. Considering the weighty charge of government, and how essential it is for myself, for the welfare of the country, and for the Company's business, that I should have a person who has had experience therein to advise and assist me, I do agree to have one fixed with me, with the advice of the Governor and Council, in the station of *Naib Soubah*[2], who shall accordingly have immediately under me the chief management of all affairs : And as Mahomed Reza Khan, the *Naib* of Dacca, has in every respect my approbation and that of the Governor and Council, I do further agree that this trust shall be conferred on him, and I will not dispose of him without the acquiescence of those gentlemen............

British control over administration through *Naib Subah*

Reza Khan

3. The business of the collection of the revenues shall, under the *Naib Soubah*, be divided into two or more branches as may appear proper, and as I have the fullest dependence and confidence on the attachment of the English and their regard to my interest and dignity, and am desirous of giving them every testimony hereof, I do further consent that the appointment and dismission[3] of the *Muttaseddees*[4] of those branches, and the allotment of their several districts, shall be with the approbation of the Governor and Council ; and.......... it is my further will that the Governor and Council shall be at liberty to object and point out to me when improper people are entrusted, or where my officers

British control over appointment and dismissal of revenue officers

1 See A. P. Das Gupta, ***Studies in the History of the British in India.***

2 Deputy Governor. (*Naib*—Deputy. *Soubah*, *i.e.*, *Subahdar*—Governor).

3 Dismissal.

4 Revenue officers.

and subjects are oppressed, and I will pay a proper regard to such representations ....

4. I do confirm to the Company, as a fixed resource, for defraying the ordinary expenses of their troops, the *chucklas* of Burdwan, Midnapore, and Chittagong, in as full a manner as heretofore ceded by my father........

VI. Treaty with Saif-ud-daula, 1766 : Article 2.

Nawab reduced to the position of a puppet

The King[1] has been graciously pleased to grant unto the English East India Company the Dewanyship of Bengal, Behar and Orissa, as a free gift for-ever[2] ; and I....do....for the better conducting the affairs of the *Soubahdarry*[3], and promoting my honour and interest, and that of the Company in the best manner, agree that the protecting the Provinces of Bengal, Behar and Orissa, and the force sufficient for that purpose, be entirely left to their discretion and good management....[4]

2. CLIVE'S VIEWS ON BRITISH POLICY, 1765.

Territorial expansion not wanted

Nothing but extreme necessity ought to induce us to extend our ideas of territorial acquisitions beyond the amount of those ceded by Kasim Ali Khan[5].... ..

Why Nawab should be kept under British control

But by this system of moderation it is not intended that the Nawab should be left entirely independent of us. The moment he fancies himself in this situation he will look upon us as enemies who have taken too much from him, and whom it will be necessary, either to reduce to our ancient state of mere merchants, or to extirpate. This, there-

1 Shah Alam II, the nominal Mughal Emperor.

2 See Document No. 3 (II).

3 *Subahdari*, *i.e.*, Governorship (of Bengal).

4 The second article of the Company's treaty with Mubarak-ud-daula is exactly similar.

5 The *Zamindaris* of Burdwan, Midnapore and Chittagong assigned to the Company by Mir Qasim.

fore, was the error of Mr. Vansittart's conduct[1]; he advised the Nawab to regulate his treasury, save money, to form and discipline an excellent army, and to pay them well and regularly, contrary to the practice of all the princes of India. By following this advice punctually, Kasim Ali,[2] in two years, thought himself in a condition to bid us defiance, and was near being so.

Example of Mir Qasim

It ought, therefore, to be our plan to convince the Nawab that our troops are his best, his only support against foreign enemies, and that our friendship will be his best support against the plots and revolutions of his own officers. Necessitated, by the extent of his dominions, to repose large governments and great trusts in particular men, jealousies will be perpetually subsisting. On the nice and disinterested management of these will depend our importance. The principal officers must be convinced that we will protect them from any capricious violences of their sovereign[3]; and, on the other hand, the Nawab must be convinced, that we will give them up to his just resentment the moment their ambition alone leads them to strike at him.

How Nawab may be kept under control

British policy towards Nawab's officers

To carry this balance with an even hand, the strictest integrity will be necessary in every one who shall have a vote in your councils abroad. I found myself every day assaulted by large offers of presents, from the principal men of the province, not to support the Nawab in resolutions contrary to their interests; and from the Nawab, to sacrifice them to his capricious resentments.

Temptations open to Company's servants

But even this conduct will not be sufficient

1 "Vansittart had failed to realise that a strong Nawab would inevitably desire to reduce the extraordinary privileges which the English claimed........"

2 Mir Qasim.

3 While Clive protected Ramnarayan, who was always loyal to the English, Vansittart surrendered him to Mir Qasim. See *Cambridge History of India*, Vol. V, p. 170.

Commercial privileges of Company's servants

to keep us from giving umbrage. During Mr. Vansittart's government, all your servants thought themselves entitled to take large shares in the monopolies of salt, betel, and tobacco, the three articles, next to grain, of greatest consumption in the empire[1]. The odium of seeing such monopolies in the hands of foreigners need not be insisted on; but this is not the only inconvenience; it is productive of another, equally, if not more prejudicial to the Company's interests; it enables many of your servants to obtain, very suddenly, fortunes greater than those which in former times were thought a sufficient reward for a long continuance in your service. Hence these gentlemen, thus suddenly enriched, think of nothing but of returning to enjoy their fortunes in England, and leave your affairs in the hands of young men, whose sanguine expectations are inflamed by the examples of those who have just left them.

Bad effects

3. DOUBLE GOVERNMENT, 1765-1772.

[In a letter[2] to William Pitt the Elder, dated January 7, 1759, Clive suggested the desirability of acquiring the sovereignty of Bengal, Bihar and Orissa for the Company, and added, "........there is little room to doubt our easily obtaining the Moghul's[3] *sunnud* (or grant) in confirmation thereof, provided we agreed to pay him the stipulated allot-

Mir Jafat obliged Company's servants

1 Mir Jafar's *parwanas* contained the following instructions to his officers: "Whatever goods the Company's *gumastahs* may bring or carry to or from their factories, the *aurungs* or other places, by land or by water, with a *dustuck* from any of the chiefs of their factories, you shall neither ask nor receive any sum, however trifling, for the same. Know they have full power to buy and sell; you are by no means to oppose it........Whoever acts contrary to these orders, the English have full power to punish them". (*Parwana*—order. *Gumastah*—servant. *Aurung*—depot. *Dustuck*—pass.)

2 See Keith, *Speeches and Documents on Indian Policy*, Vol. I, pp. 13-18.

3 Shah Alam II, the nominal Mughal Emperor.

ment out of the revenues, *viz.*, fifty *lacs* annually". He continued, "........application has been made to me from the court of Delhi, to take charge of collecting this payment, the person entrusted with which is styled the King's *Dewan*, and is the next person both in dignity and power to the *Subah*. But this high office I have been obliged to decline for the present, as I am unwilling to occasion any jealousy on the part of the *Subah*; especially as I see no likelihood of the Company's providing us with a sufficient force to support properly so considerable an employ, and which would open a way for securing the Subahship to ourselves."

Clive's views on *Dewani* (1759)

Pursued by the relentless hostility of the powerful *Wazir*, Imad-ul-Mulk, Ali Gauhar, son and heir-apparent of Emperor Alamgir II, fled from Delhi in 1758, formed an alliance with Shuja-ud-daula, Nawab of Oudh, and tried unsuccessfully to carve out for himself a Kingdom in Bengal. He succeeded to the throne under the title of Shah Alam II after the murder of his father in 1759, but he remained a homeless wanderer, unable to occupy the Imperial capital. After the battle of Buxar (October 23, 1764) Shah Alam, deserted by Shuja-ud-daula, took shelter with the English. Clive gave him the districts of Kora and Allahabad, with an estimated revenue of 28 *lakhs* a year, and promised him the Bengal tribute of 26 *lakhs* per annum, and in return for these secured the *farman* of August 12, 1765. Thus the Company secured the full control of Bengal affairs 'without incurring the inconvenience of formal and avowed dominion'[1].

Adventures of Shah Alam

Clive's agreement with Shah Alam

The system of 'Double Government' introduced by Clive remained in force for about seven years, 1765-72. He was succeeded as Governor in 1767 by Verelst[2], who was succeeded at the end of 1769 by Cartier. Warren Hastings took charge from Cartier in April, 1772. The evil effects of 'Double Government' attracted the notice of responsible officials of the Company, like Richard Becher, who was Resident at the Nawab's Court in 1769. The system was abolished by Warren Hastings.[3]]

Double Government in action

1 See Sir J. N. Sarkar, *Fall of the Mughal Empire*, Vol. II, Chapters XIII, XXV; and A. L. Srivastava, *Shuja-ud-Daulah*, Vol. I, Chapters IV, VI; Vol. II, Chapter X.

2 See Nandalal Chatterji, *Verelst in India*.

3 See Document No. 4.

I. Clive's[1] views on the position of Nawab of Bengal[2], 1765.

We have at last arrived at that critical period, which I have long foreseen ; I mean that period which renders it necessary for us to determine, whether we can or shall take the whole to ourselves. ....it is scarcely an hyperbole to say that the whole Mogul Empire is in our hands. The inhabitants of the country............have no attachment to any obligation ; their forces are neither disciplined, commanded, nor paid, as ours are. Can it then be doubted that a large army of Europeans will effectually preserve us Sovereigns, not only holding in awe the attempts of any Country Prince, but by rendering us so truly formidable, that no French, Dutch, or other enemy will presume to molest us... ....The very Nabobs whom we might support, would be either covetous of our possessions, or jealous of our power. Ambition, fear, avarice, would be daily watching to destroy us ; a victory would be but a temporary relief to us, for the dethroning of the first Nabob would be followed by setting up another, who from the same principles, would, when his treasure admitted of his keeping up an Army, pursue the very path of his predecessor. We must indeed become Nabobs ourselves in fact, if not in name, perhaps totally so without disguise.

Weakness of Mughal Government

Precarious position of the Company

Company must make itself *de facto* Nawab.

II. Grant of Dewani to East India Company by Emperor Shah Alam, 1765.

At this happy time our royal *Firmaund*[3], indispensably requiring obedience, is issued : that whereas,

1 Clive reached Calcutta as Governor of Fort William in May, 1765, and left India for the last time in February, 1767.

2 Letter to Chairman of Board of Directors, April 17, 1765.

. *Farman*—Grant.

in consideration of the attachment and services of the high and mighty, the noblest of exalted nobles, the chief of illustrious warriors, our faithful servants and sincere well-wishers, worthy of our royal favours, the English Company, we have granted them the *Dewanny*[1] of the Provinces of Bengal, Behar, and Orissa; from the beginning of the *Fussul Rubby* of the Bengal year 1172, as a free gift and *ultumgau*[2], without the association of any other person, and with an exemption from the payment of the customs of the *Dewanny*, which used to be paid to the Court. It is requisite that the said Company engage to be security for the sum of twenty-six *lakhs* of rupees a year, for our royal revenue, which sum has been appointed from the Nabob Nudjum-ul-Dowla Behauder[3], and regularly remit the same to the royal Circar; and in this case, as the said Company are obliged to keep up a large army for the protection of the Provinces of Bengal, etc., we have granted to them whatsoever may remain out of the revenues of the said Provinces, after remitting the sum of twenty-six *lakhs* of rupees to the royal Circar, and providing for the expenses of the *Nizamut*[4]. It is requisite that our royal descendants, the *viziers*[5], the bestowers of dignity, the *Omrahs*[6], high in rank,

Nature of the grant

Liabilities of the Company

1 For the meaning of *Dewani* see Moreland, ***The Agrarian System of Moslem India***, pp. XIV-XV ; and D. N. Banerjee, ***Early Administrative System of the East India Company in Bengal***, Vol. I, pp. 1-6, 50-66.

2 *Altamgha* or *Grant-under-Seal.* Such grant constituted 'the nearest approach to land-ownership, in the modern sense, which appears during the Mogul period.' By 'contrast with the other tenures of the period, it may be regarded as permanent.' See Moreland, ***The Agrarian System of Moslem India***, pp. 127-128

3 Nawab Najm-ud-daula.

4 Maintenance of law and order, administration of criminal justice, etc.

5 *Wazir*—Chief Minister.

6 Nobles.

Emperor's successors and officers must leave *Dewani* in Company's possession "for ever and ever."

the great officers, the *Muttaseddees* of the *Dewanny*, the managers of the business of the *Sultanut*, the *Jaghirdars* and *Croories*, as well as the future as the present, using their constant endeavours for the establishment of this our royal command, leave the said office in possession of the said Company, from generation to generation, for ever and ever. Looking upon them to be assured from dismission or removal, they must, on no account whatsoever, give them any interruption, and they must regard them as excused and exempted from the payment of all the customs of the *Dewanny* and royal demands. Knowing our orders on the subject to be most strict and positive, let them not deviate therefrom.

III. Clive's 'System of Politics'[1], 1767.

Nawab—a 'shadow'

The first point in Politics which I offer to your consideration, is the Form of Government. We are sensible, that since the acquisition of the *Dewanny*, the power formerly belonging to the *Soubah* of these Provinces is totally in fact vested in the East India Company. Nothing remains to him, but the name and shadow of authority. This name, however, this shadow, it is indispensably necessary we should seem to venerate. Every mark of distinction and respect must be shown him, and he himself encouraged to shew his resentment upon the least want of respect from other nations. Under the sanction of a *Soubah* every encroachment that may be attempted by Foreign Powers, can effectually be crushed, without any apparent interposition of our own authority, and all real grievances, complained of by them, can, through the same channel, be examined into and redressed............To appoint the Company's servants to the offices of Collectors, or indeed to do any act, by an exertion of the English Power, which can equally be done by the Nabob at our instance, would

Why the 'shadow' must be maintained

1 Select Committee, January 16, 1767.

be throwing off the mask,—would be declaring the Company *Soubah* of the Provinces. Foreign nations would immediately take umbrage, and complaints preferred to the British Court might be attended with very embarrassing consequences. Nor can it be supposed that either the French, Dutch, or Danes would readily acknowledge the Company's Soubahship, and pay into the hands of their servants the duties upon trade, or the quit rents of those districts which they may have long been possessed of by virtue of the Royal *Firmaund*, or Grants from former Nabobs ....In short, the present Form of Government will not, in my opinion, admit of variation: The distinction between the Company and the Nabob must be carefully maintained, and every measure wherein the Country Government shall even seem to be concerned, must be carried on in the name of the Nabob, and by his authority........

Fear of other European Powers

Distinction between Company and Nawab must be maintained.

IV. Richard Becher on bad effects of Double Government[1], 1769.

It must give pain to an Englishman to have reason to think that since the accession of the Company to the *Diwani* the condition of the people of this country has been worse than it was before; and yet I am afraid the fact is undoubted............this fine country, which flourished under the most despotic and arbitrary Government, is verging towards its ruin..........

Bengal verging towards ruin

In Aliverdi Khan's[2] time the amount of the revenue paid into the Treasury was much less than what comes in at present............When the English received the grant of the *Diwani* their first consideration seems to have been the raising of as large sums from the country as could be collected, to answer the pressing demands from home and to defray the

Increased revenue demand

1 May 24, 1769. See Firminger, ***Introduction to Fifth Report***, Chapter IX.

2 Nawab of Bengal, 1740-1756.

large expenses here. The *Zamindars* not being willing or able to pay the sums required, *Aumils*[1] have been sent into most of the districts. These *Aumils* on their appointment agree............to pay a fixed sum for the districts they are to go to, and the man that has offered most has generally been preferred. What a destructive system is this for the poor inhabitants! The *Aumils* have no connection or natural interest in the welfare of the country where they make the collection, nor have they any certainty of holding their places beyond the year : the best recommendation they can have is to pay up their *Kistbundi*[2] punctually, to which purpose they fail not to rack the country whenever they find they cannot otherwise pay their *Kists* and secure a handsome sum themselves...........The *Aumils*...........appoint those that act under them ; so that during the time of the year's collection their power is absolute..........On this destructive plan and with a continual demand for more revenue have the collections been made ever since the English have been in possession of the *Dewani*...........

Oppression of *Amils*

V. Bolts[3] on bad effects of Double Government[4], 1772.

De facto sovereignty of the Company

The soil, revenues, justice, and interior government of these countries are entirely in the hands of the English East India Company ; the prince, whom they call the Grand Mogul[5], being the mere instrument of their power, set up by them, and supported by a pension for the serving of their own private purposes ; the pretended Nawabs of Bengal and Behar being the actual stipendiary servants of the

1 Revenue farmers.

2 Instalment payable under contract.

3 A discharged officer of the Company.

4 See Firminger, *Introduction to Fifth Report*, Chapter X.

5 Shah Alam II.

said Company, and the *Diwani*, under which title they pretend to hold those territorial possessions, being a mere fiction, invented for the private purposes of the Company and their servants............

Prosperity of Bengal

The revenues of the provinces of Bengal, Behar, and part of Orissa, which the Company collect, were in the year 1765 estimated to amount to upwards of three million six hundred thousand pounds sterling per annum ; and by proper management they might with ease have been improved by this time to six millions : but at present, under the ridiculous plan of a double government, they are every day exhausted by plunder and oppression ; and while this nation is gazing after the fruit, the Company and their substitutes are suffered to be rooting up the tree.

'Ridiculous plan of a double government'

Anomaly of combining political and commercial functions

The different interests of the Company, as sovereigns of Bengal and at the same time as monopolizers of all the trade and commerce of those countries, operate in direct opposition, and are mutually destructive of each other ; so that without a new system, the progress must be from bad to worse. The Company, if left to pursue its present system, will ruin itself ; the possessions in Bengal will be beggared.

4. THE COMPANY AS DEWAN[1], 1772.

[During the period 1765-1772 the actual administration of the Nawab's provinces was in the hands of two *Naib Dewans*—the Company itself being the *Dewan*—Muhammad Reza Khan in Bengal and Shitab Rai in Bihar, who were to some extent controlled by British officers called Supervisors, these latter being first appointed in 1769. Warren Hastings was 'armed with full powers to make a complete reformation' and ordered 'to destroy the whole fabric of the double government'. He abolished the office of *Naib Dewan* and prosecuted Muhammad Reza Khan and Shitab Rai for peculation, although both of them were acquitted. The Company formally undertook to collect the revenues through

1 Proceedings of the Secret Select Committee. April 28, 1772.

See N. Majumder, *Justice and Police in Bengal.*

Reforms of Warren Hastings

the agency of its own servants and thus practically assumed responsibility for the whole civil administration. Hastings described it as 'implanting the authority of the Company, and the sovereignty of Great Britain, in the constitution of this country'. He transferred the treasury or *Khalsa* from Murshidabad to Calcutta, which thus became the capital of Bengal. He appointed as the minor Nawab's guardian, not his mother, but Mani Begam, the widow of Mir Jafar, whose interest, Hastings declared, 'must lead her to concur with all the designs of the Company, and to solicit their patronage'. He also introduced commercial and judicial reforms[1]. He wrote to Sykes on March 2, 1773, "........by the translation of the *Khalsa* to Calcutta, by the exercise of the *Diwani* without an intermediate agent, by the present establishment and superintendency of the Nawab's household, and by the establishment of the new courts of justice, under the control of our own Government, the authority of the Company is fixed in this country without any possibility of a competition and beyond the power of any but themselves to shake it. The Nawab is a mere name, and the seat of Government most effectually and visibly translated from Murshidabad to Calcutta........"]

Dismissal of Reza Khan

As Mahomed Reza Cawn is now deprived of his office of *Naib Dewan* the Honourable Court of Directors have resolved to stand forth themselves in the character of *Dewan*. The Board are of opinion that the Moorshedabad Council should be directed immediately to undertake the conduct of that office until proper plans can be formed for the management of so important a trust. It is therefore—

Company as *Dewan*

Instructions to Murshidabad Council

Agreed to send the following direction to that Board :—

To Samuel Middleton, Esq., Chief, etc., Council of Revenue at Mooreshedabad.

Murshidabad Council to discharge Reza Khan's duties pending final arrangement

Gentlemen,

The Honourable Court of Directors having thought proper to divest Mahomed Reza Cawn of his station of *Naib Dewan* and having determined to stand forth publicly themselves in the character of *Dewan*, we direct that for the present you take

[1] See Monckton Jones, *Warren Hastings in Bengal*; and Firminger, *Introduction to Fifth Report*, Chapters XI, XII.

charge of that office and perform the duties of it until we shall have settled and digested a proper plan for the conduct and management of so important a trust, and you will immediately make this alteration public at the city as well as in all the districts appertaining to the province of Bengal.

Fort William, We are, etc.
The 28th April, 1772. (Sd.) Members of Council.

* * * *

Position of Shitab Rai similar to that of Reza Khan

As the charge of neglect or embezzlement of revenues is equally applied by the Court of Directors to Setabroy, the *Naib Dewan* of the Behar province, as to Mahomed Reza Cawn, as they have directed a minute enquiry to be made into both, and as the leaving Setabroy in possession of his office after the measures which have been taken respecting Mahomed Reza Cawn, and the conclusions which he must necessarily form with regard to himself, may put in his power to elude any enquiry into his conduct either by private collusions with his agents or by flight :—

Arrest of Shitab Rai

The Board are of opinion that it will be equally necessary to lay an immediate restraint upon his person and that of his *Dewan* also.

Instructions to Chief of Patna

Agreed therefore that the President be requested to write to the Chief of Patna for the above purpose in like manner as he has written to the Chief of the *Durbar*.

5. WARREN HASTINGS ON DEFECTS IN THE COMPANY'S SYSTEM OF GOVERNMENT[1], 1773.

Bad administration due more to the system than to individuals

May I be permitted, in all deference and submission to your commands, to offer it as my opinion that whatever may have been the conduct of individuals, or even of the collective members of your former administrations, the blame is not so much imputable to them as to the want of a principle of

1 Letter to Court of Directors, November 11, 1773.

government adequate to its substance, and a coercive power to enforce it. The extent of Bengal, and its possible resources, are equal to those of most states in Europe. Its difficulties are greater than those of any, because it wants both an established form and powers of government, deriving its actual support from the unremitted labour and personal execution of individuals in power instead of the vital influence which flows through the channels of a regular constitution, and imperceptibly animates every part of it. Our constitution is nowhere to be traced but in ancient charters which were framed for the jurisdiction of your trading settlements, the sales of your exports, and the provision of your annual investment. I need not observe how incompetent these must prove for the government of a great kingdom, and for the preservation of its riches from private violence and embezzlement.

Charters of a commercial corporation inadequate for government of a great kingdom

* * * * *

Lack of continuity and definition

I shall offer but two points to your notice. One is the rapid succession of your governors[1]; the other, the undefined powers of the respective members of your administration. Both are productive of the same ill effects, a want of vigour and consistency in public measures, and a general diffidence and the consequent spirit of intrigue in those whose interests or sevices are by any mode of relation connected with our government.

* * * * *

Limitations on powers of the Governor

The powers of the Governor, although supposed to be great, are in reality little more than those of any individual in his Council. Their compliance, his own abilities, or a superior share of attention, and the opinion that he possesses extraordinary powers, may give him the effect of them, and an ascendant over his associates in the administration; but a

1 The term of each Governor was then limited to three years.

moment's contention is sufficient to discover the nakedness of his authority, and to level him with the rest............

To draw the line between him and the other members of his administration, and to define the powers which may be entrusted to his charge, would not be an easy task............I am convinced that the future prosperity, and even the being of the Company, and of the national interests in this great kingdom, depend upon it. The distant and slow interposition of the supreme power which is lodged in your hands cannot supply the remedies to the disorders which may arise in your state. A principle of vigour, activity, and decision must rest somewhere. In a body of men entrusted with it, its efficacy is lost by being too much divided. It is liable to still worse consequences, the less the number is of which the body consists, because the majority is easier formed. Fixed to a single-point only it can command confidence and ensure consistency............

Necessity of defining and strengthening the position of the Governor

On the other hand there is a danger that such a power may be abused, unless powerful checks be provided to counteract the misapplication of it........I ....proceed to describe the points of distinction which appear to me necessary for ascertaining the respective provinces of the Council, the Select Committee, and the President.

Necessity of limiting Governor's power

1. The Select Committee shall have the power of making peace and war, and of determining all measures respecting both, independent of the Council at large. But they shall enter into no treaty of alliance, whether offensive or defensive, for a longer duration than two years without a special authority from the Honourable the Court of Directors. Every such treaty shall be communicated to the Council at large as soon as it conveniently may be, that their opinion upon it may be transmitted with it to the Court of Directors.

Suggestions: (1) Powers of Select Committee

(2) Special powers of Governor

2. It shall nevertheless be allowable for the President to bring any matter before the Council at large, although included within the foregoing limitations, and the decision of the Council thereon shall be valid and binding on the Select Committee. But no other members of the Committee shall be allowed the same privilege.

3. The President shall have the privilege of acting by his own separate authority on such urgent and extraordinary cases as shall in his judgment require it, notwithstanding any decision of the Council, or of the Committee passed thereon. On every occasion the President shall record his resolution to act in the manner above specified, in virtue of the power thus vested in him, and shall expressly declare that he charges himself with the whole responsibility.

4. All civil appointments within the provinces shall be made by the Board at large, but the President shall be empowered of his own authority to prevent any particular appointment and to recall any person, not being a member of the Board, from his station, even without a reason assigned. All appointments beyond the provinces, and all military appointments which are not in the regular line of promotion, shall be made by the President alone.

* * * *

Necessity of lengthening Governor's tenure of office

........I offer it as my humble opinion that on whomsoever you shall think fit to bestow the place which I now hold in your service, it will be advisable to fix him in it for a long period of time.......

The first command of a state so extensive as that of Bengal is not without opportunities of private emoluments, and although the allowances which your bounty has liberally provided for your servants may be reasonably expected to fix the bound of their desires, yet you will find it extremely difficult to restrain men from profiting by other means, who look upon their appointment as the measure of a day, and

Longer term of Governor would check corruption

who, from the uncertainty of their condition, see no room for any acquisition but of wealth, since reputation and the consequence which follows the successful conduct of great affairs are only to be attained in a course of years.......

... .Every man whom your choice has honoured with so distinguished a trust seeks to merit approbation and acquire an eclat by innovations, for which the wild scene before him affords ample and justifiable occasion. But innovations of real use require a length of time, and the unremitting application of their original principles to perfect them. Their immediate effects are often hurtful, and their intended benefits remote........But who that looks only for present applause or present credit would hazard both for remote advantages, of which another might arrogate the merit and assume the reward? Or who will labour with equal perseverance for the accomplishment of measures projected by others, as of those of which he was himself the contriver?

Longer term of Governor necessary for reform

6. THE EAST INDIA COMPANY ACT (REGULATING ACT), 1773. [1]

[The establishment of the Company's territorial sovereignty in Bengal, Bihar and Orissa was a direct prelude to Parliamentary intervention in its affairs, and the immediate cause of intervention was financial. "The eyes of the proprietors of the Company were dazzled by golden visions." After the grant of *Dewani* they raised the dividend from 6 per cent. at which it had been for many years, to 10 per cent. in 1766 and in 1767 to 12½ per cent. Speculation in India stock naturally began. The shadow of the South Sea Bubble was still dimly hanging over England, the Government could not avoid the responsibility of preventing disaster by the prompt adoption of precautionary measures. In 1766 Parliament instituted an inquiry into the Company's affairs at Elder Pitt's suggestion. At once it became clear that the inquiry would not be limited to the question of the dividend.

Beginning of Parliamentary intervention

1 13 Geo. 3, c. 63.

Elder Pitt, under whose able guidance the Seven Years' War had consolidated and strengthened the Company's position in India[1], held that the acquisitions of the Company really belonged to the Crown. Similar views were held by Lord North. Serious steps might have been taken against the Company; but Elder Pitt's illness placed the matter in the hands of Charles Townshend, who was inclined to spare the great corporation as much as possible. Respect for charter rights was very strong in the eighteenth century; the extension of the control of the Crown over the territories acquired by the Company was regarded by Whigs and Tories alike as an infringement of its charters. The result was that Townshend's Acts[2] of 1767 bound the Company to restrict its dividend to 10 per cent. and to pay £400,000 annually for two years into the Exchequer in respect of its territories and revenues. "Thus the State claimed its share of the Indian spoil, and asserted its rights to control the sovereignty of Indian territories".[3]

Acts of 1767

In 1769 a new agreement was made by Parliament with the Company for five years, during which period the Company was empowered to enjoy the territorial revenues of India in exchange for an annual payment of £400,000 into the Exchequer. But the Company was approaching bankruptcy, and in 1772 it had to confess its inability to pay the annuity. In order to forestall drastic changes from outside the Company attempted through Sullivan its Deputy Chairman, to introduce a Bill for the better regulation of its affairs. But leave to introduce Sullivan's Bill was refused, and in April, 1772, Burgoyne carried a motion to appoint a Select Committee to enquire into the affairs of the Company. Lord North, who had become Prime Minister in 1770, was not prepared to give up the large sum which the Treasury received from the Company; but he was rather unwilling to initiate drastic changes. Fortunately Burgoyne's motion 'relieved him of responsibility; it gave him time'[4]. But in August, 1772, the Company was obliged to apply to Government for a loan of £1,000,000. Lord North's habitual unwill-

Background of Regulating Act

1 Horace Walpole wrote, "Half the empire of Hindostan, conquered under his administration by the spirit he had infused, still pours its treasures into the Thames."

2 7 Geo. III, cc. 56, 57. See Keith, *Speeches and Documents on Indian Policy*, Vol. I.

3 Ilbert, *The Government of India*, p. 39.

4 Pemberton, *Lord North*, p. 169.

Instability in the councils and measures of the said Company : May it therefore please your Majesty that it may be enacted ; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the Authority of the same, that..........

7. And for the better management of the said United Company's affairs in India, be it further enacted by the Authority aforesaid, that for the government of the Presidency of Fort William in Bengal, there shall be appointed a Governor-General, and four Counsellors ;

Governor-General and Council, powers and duties

and that the whole civil and military government of the said Presidency, and also the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa shall, during such time as the territorial acquisitions and revenues shall remain in the possession of the said United Company, be, and are hereby vested in the said Governor-General and Council of the said Presidency of Fort William in Bengal, in like manner, to all intents and purposes whatsoever, as the same now are, or at any time heretofore might have been exercised by the President and Council or Select Committee in the said kingdoms.

Opinion of majority to prevail

8. And be it enacted by the Authority aforesaid, that in all cases whatsoever wherein any difference of opinion shall arise upon any question proposed in any consultation, the said Governor-General and Council shall be bound and concluded by the opinion and decision of the major part of those present : and if it shall happen that, by the death or removal, or by the absence, of any of the Members of the said Council, such Governor-General and Council shall happen to

Casting vote of Governor-General

be equally divided, then, and in every such case, the said Governor-General, or, in his absence, the eldest Counsellor present, shall have a casting voice, and his opinion shall be decisive and conclusive.

Control of Governor-General in Council on Madras and Bombay

9. And be it further enacted by the Authority aforesaid, that the said Governor-General and Council, or the major part of them, shall have, and they are hereby authorised to have, power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencoolen respectively, so far and in so much as that it shall not be lawful for any President and Council of Madras, Bombay, or Bencoolen for the time being, to make any orders for commencing hostilities, or declaring or making war, against any Indian Princes or Powers, or for negotiating or concluding any treaty of peace, or other treaty, with any such Indian Princes or Powers, without the consent and approbation of the said Governor-General and Council first had and obtained, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the orders from the Governor-General and Council might arrive ; and except in such cases where the said Presidents and Councils respectively shall have received special orders from the said United Company ; and any President and Council of Madras, Bombay, or Bencoolen, who shall offend in any of the cases aforesaid, shall be liable to be suspended from his or their office by the order of the said Governor-General and Council ; and every President and Council of Madras, Bombay, and Bencoolen for the time being, shall, and they are hereby respectively directed and required to, pay due obedience to such orders as they shall receive, touching the premises, from the said Governor-General and Council for the time being, and constantly and diligently to transmit to the said Governor-General and Council advice and intelligence of all transactions and matters whatso-

ever that shall come to their knowledge, relating to the government, revenues or interest, of the said United Company........... ; and the said Governor-General and Council for the time being shall, and they are hereby directed and required to pay due obedience to all such orders as they shall receive from the Court of Directors of the said United Company, and to correspond, from time to time, and constantly and diligently transmit to the said Court an exact particular of all advices or intelligence, and of all transactions and matters whatsoever, that shall come to their knowledge, relating to the government, commerce, revenues, or interest, of the said United Company ....

Names of Governor-General and Counsellors

10. And.... ....that Warren Hastings, Esquire, shall be the first Governor-General ; and that Lieutenant-General John Clavering, the Honorable George Monson, Richard Barwell, Esquire, and Philip Francis, Esquire, shall be the four first Counsellors ; and they, and each of them, shall hold and continue in his and their respective offices for and during the term of five years from the time of their arrival at Fort William in Bengal, and taking upon them the government of the said Presidency, and shall not be removeable in the meantime, except by His Majesty, his Heirs and Successors, upon representation made by the Court of Directors of the said United Company for the time being .... ; and from and after the expiration of the said term of five years, the power of nominating and removing the succeeding Governor-General and Council shall be vested in the Directors of the said United Company.

George II's Charter of 1753

13. And, whereas his late Majesty King George the Second did by his letters patent, bearing date at Westminster the eighth day of January, in the twenty-sixth year of his reign, grant unto the said

United Company of merchants of England trading to the East Indies his Royal charter, thereby amongst other things, constituting and establishing Courts of civil, criminal and ecclesiastical jurisdiction, at the said United Company's respective settlements at Madras-patnam, Bombay on the Island of Bombay, and Fort William in Bengal; which said charter does not sufficiently provide for the due administration of justice in such manner as the state and condition of the Company's Presidency of Fort William in Bengal, so long as the said Company shall continue in the possession of the territorial acquisitions before mentioned, do and must require; be it therefore enacted by the Authority aforesaid, that it shall and may be lawful for His Majesty, by charter, or letters patent under the Great Seal of Great Britain, to erect and establish a Supreme Court of Judicature at Fort William aforesaid, to consist of a Chief Justice and three other judges[1], being Barristers in England or Ireland, of not less than five years' standing, to be named from time to time by His Majesty, his Heirs and Successors; which said Supreme Court of Judicature shall have, and the same Court is hereby declared to have, full power and authority to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers of the said Court, with such reasonable salaries, as shall be approved of by the said Governor-General and Council; and to form and establish such rules of practice, and such rules for the process of the said Court, and to do all such other things as shall be found necessary for the administration of justice, and the due execution of all or any of the powers which, by the said charter, shall or may be granted and committed to the said Court; and also shall be, at all times, a Court of Record, and

Provision for Supreme Court

Power of Supreme Court

1 Subsequently reduced to a Chief Justice and two Judges. (37 Geo. III. c. 142, Sec. 1).

shall be a Court of Oyer and Terminer and Gaol Delivery, in and for the said town of Calcutta, and factory of Fort William in Bengal aforesaid, and the limits thereof, and the factories subordinate thereto.

Jurisdiction of Supreme Court

14. Provided nevertheless,............that the said new charter which His Majesty is hereinbefore empowered to grant, and the jurisdiction, powers, and authorities to be thereby established, shall and may extend to all British subjects who shall reside in the kingdoms or provinces of Bengal, Behar and Orissa, or any of them, under the protection of the said United Company; and the same charter shall be competent and effectual: and the Supreme Court of Judicature therein and thereby to be established, shall have full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crimes, misdemeanours or oppressions, committed or to be committed; and also to entertain, hear and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Behar and Orissa, and any suit, action or complaint against any person who shall, at the time when such debt or cause of action or complaint shall have arisen, have been employed by or shall then have been, directly or indirectly, in the service of the said United Company, or of any of His Majesty's subjects.

15. Provided also, that the said Court shall not be competent to hear, try or determine any indictment or information against the said Governor-General, or any of the said Council for the time being, for any offence (not being treason or felony) which such Governor-General, or any of the said Council, shall or may be charged with having committed in Bengal, Behar and Orissa.

17. And it is hereby further enacted and pro-

vided, that nothing in this Act shall extend to subject the person of the Governor-General, or of any of the said Council or Chief Justice and Judges respectively for the time being, to be arrested or imprisoned upon any aciton, suit or proceeding in the said Court.

Governor-General, Councillors and Judges not liable to arrest by order of Supreme Court

23. And.............no Governor-General, or any of the Council of the said United Company's Presidency of Fort William in Bengal or any Chief Justice or any of the Judges of the Supreme Court of Judicature at Fort William aforesaid, shall, directly or indirectly, by themselves or by any other person, or persons, for his or their use or on his or their behalf accept, receive or take, of or from any person or persons, in any manner or on any account whatsoever, any present, gift, donation, gratuity, or reward, pecuniary or otherwise, or any promise or engagement for any present, gift, donation, gratuity, or reward; and that no Governor-General, or any of the said Council, or any Chief Justice or Judge of the said Court, shall carry on, be concerned in, or have any dealing or transactions, by way of traffic or commerce of any kind whatsoever, either for his or their use or benefit, profit or advantage, or for the benefit or advantage of any other person or persons whatsoever (the trade and commerce of the said United Company only excepted); an usage or custom to the contrary thereof in any wise notwithstanding.

Provision against receiving presents and carrying on private trade

36. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the Governor-General and Council of the said United Company's settlement at Fort William in Bengal, from time to time, to make and issue such rules, ordinances, and regulations for the good order and civil government of the said United Company's settlement at Fort William aforesaid, and other

Governor-General and Council to make regulations

factories and places subordinate or to be subordinate thereto, as shall be deemed just and reasonable (such rules, ordinances, and regulations not being repugnant to the laws of the realm), and to set, impose, inflict and levy, reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances and regulations; but nevertheless, the same or any of them, shall not be valid or of any force or effect, until the same shall be duly registered and published in the said Supreme Court of Judicature, which shall be, by the said new charter, established, with the consent and approbation of the said Court, which registry shall not be made until the expiration of twenty days after the same shall be openly published, and a copy thereof affixed in some conspicuous part of the Court house or place where the said Supreme Court shall be held; and from and immediately after such registry as aforesaid, the same shall be good and valid in law; but, nevertheless, it shall be lawful for any person or persons in India to appeal therefrom to His Majesty, his Heirs or Successors, in Council, who are hereby impowered, if they think fit, to set aside and repeal any such rules, ordinances, and regulations respectively, so as such appeal or notice thereof, be lodged in the said new Court of Judicature within the space of sixty days after the time of the registering and publishing the same; ....

Regulations to be registered in Supreme Court

37. Provided always............that the said Governor-General and Council shall, and they are hereby required, from time to time, to transmit copies of all such rules, ordinances, and regulations as they shall make and issue to one of His Majesty's Principal Secretaries of State for the time being and that it shall and may be lawful to and for His Majesty, his Heirs and Successors, from time to time, as they shall think necessary, to signify to the said United Company, under his or their sign manual, his or their

Governor-General and Council to transmit copies of regulations to Minister in England

disapprobation and disallowance of all such rules, ordinances and regulations; and that from and immediately after the time that such disapprobation shall be duly registered and published in the said Supreme Court of Judicature at Fort William in Bengal, all such rules, ordinances, and regulations shall be null and void; but in case His Majesty, his Heirs and Successors, shall not, within the space of two years from the making of such rules, ordinances and regulations, signify his or their disapprobation or disallowance thereof, as aforesaid, that then, and in that case, all such rules, ordinances and regulations shall be valid and effectual, and have full force.

Regulations subject to disallowance by King

39. And............if any Governor-General, President or Governor or Council of any of the said Company's principal or other settlements in India, or the Chief Justice or any of the Judges of the said Supreme Court of Judicature, to be by the said new Charter established or of any other Court in any of the said United Company's settlements, or any other person, or persons who now are or heretofore have been employed by or in the service of the said United Company, in any civil or military station, office, or capacity, or who have or claim, or heretofore have had or claimed any power or authority or jurisdiction by or from the said United Company, or any of His Majesty's subjects residing in India, shall commit any offence against this Act or shall have been or shall be guilty of any crime, misdemeanour or offence, committed against any of His Majesty's subjects, on any of the inhabitants of India, within their respective jurisdictions, all such crimes, offences and misdemeanours may be respectively enquired of, heard, tried and determined in His Majesty's Court of King's Bench, and all such persons so offending, and not having been before tried for the same offence in India,

Jurisdiction of King's Bench over Governor-General, Councillors, Judges, Company's servants and British subjects

shall on conviction, in any such case as is not otherwise specially provided for by this Act, be liable to such fine or corporal punishment as the said Court shall think fit; and moreover shall be liable, at the discretion of the said Court, to be adjudged to be incapable of serving the said United Company in any office, civil or military; and all and every such crimes, offences and misdemeanours as aforesaid, may be alleged to be committed, and may be laid, enquired of and tried, in the County of Middlesex.[1]

Provision for trial of Company's servants

II. Lord North's[2] Speech.[3]

Necessity of Parliamentary intervention

Sir; the interposition of Parliament in the affairs of the East India Company........has met, Sir, with the approbation of all moderate, well-informed and considerate persons.......Since these matters have been under consideration, the right and motives of Parliament have been strangely questioned in the

1. 'Provisions for the trial and punishment in England of offences committed by the Company's servants in Bengal' were made by Acts of 1754 and 1770. The Act of 1770 (10 Geo III, c. 47) declared: "That any person or persons whatsoever, employed by or in the service of the Company, in any civil or military station, office, or capacity whatsoever, in the East Indies, or deriving or claiming any power, authority or jurisdiction from the said Company, shall, after the passing of this Act, be guilty of oppressing any of his Majesty's subjects beyond the seas within their respective jurisdictions; or in the exercise of any such station, office, employment, power or authority, shall be guilty of any other crime, or offence; such oppressions, crimes, and offences shall and may be enquired of, heard, and determined, in His Majesty's Court of King's Bench in England; and such punishments shall be inflicted on such offenders, as are usually inflicted for offences of the like nature committed...........in England." Probably the term 'His Majesty's subjects' excluded persons of Asiatic descent. See Ilbert, *The Government of India*, p. 284.

2 See Pemberton, *Lord North*.

3 May 18, 1773.

whole business[1], much of which I apprehend has been owing to the jobbers in the Alley........It is impossible, Sir, but the candid part of the Company must be sensible, and acknowledge, that the right, duty, and propriety of the state to interpose in this case is essentially necessary to the well-being, nay to the existence of the Company. It is upon these principles that I imagine the Bill I now bring in will in all its parts be approved ; as every article in it is framed with a view to the placing the affairs of the Company on a solid, clear, and decisive establishment.

Reply to critics

III. Petition of the East India Company to the House of Commons.[2]

That the said Bill, if passed into a law, will destroy every privilege which the petitioners hold under the most sacred securities that subjects can depend upon in this country ; and that the appointing of officers by Parliament, or the Crown, to be vested with the whole civil and military authority of the presidency of Bengal, and also the ordering, management, and government, of all the territorial acquisi-

Virtual transfer of Company's power to Crown

1 Sometime before the passing of the Regulating Act Burke declared in the House of Commons, ".........I now thus publicly and solemnly declare that all you have been doing and all you are about to do, in behalf of the East India Company, is impolitic, is unwise, and entirely repugnant to the letter as well as the spirit of the laws, the liberties, and the constitution of this country." The annuity paid by the Company to the Treasury was described as a 'crime tax'. Burke said, "This crime tax being agreed to, we heard no more of malpractices. The sinners were arrayed in white-robed innocence ; their misdeeds were more than atoned for by an expiatory sacrifice of the pecuniary kind." He clearly questioned the motives of the Government when he said, "The pretence of rectifying abuses, of nourishing, fostering and protecting the Company was only made with a design of fleecing the Company."

Burke's criticism of Government

2 May 28, 1773,

tions and revenues of the Company, in the kingdoms of Bengal, Behar, and Orissa, together with the other superintending powers over the settlements of Bombay and Madras, independent of any choice in the Company, or any real power of control in the Directors or general Courts of the said Company, or power in the Company of removing the said officers for misbehaviour, or filling up of vacancies in case of death or avoidance, is a measure so extraordinary (while the possessions are alleged to remain in the Company) that the petitioners beg leave to call the attention of Parliament to this most alarming circumstance, before the House shall give a sanction to an act, which, under the colour of regulation, will annihilate at once the powers of the East India Company, and virtually transfer them to the Crown; and that the said Bill is destructive of the essential rights and interests of the petitioners in many other respects; and is further defective as to many of the purposes for which it is declared to be framed; and that the petitioners look upon this Bill as tending to destroy the liberties of the subject, from an immense addition of power it must give to the influence of the Crown; and that the petitioners have never been made acquainted with any charge of delinquency having been made against them in Parliament, and if any such charge has been made, they have never been called upon to be heard against it; and that they cannot therefore suppose that any such delinquency on the part of the Company has been noted; which delinquency, however, is made the ground of this Bill; and that the same may not pass into a law.

Company given no chance to defend itself

IV. Burke's speech[1].

..........He said, that the House had created very few new powers, or new instructors or instructions,

1 June 10, 1773.

notwithstanding they had blackened in the preamble without cause, those who had hitherto acted; for they had still continued Mr. Hastings, Mr. Barwell, and Mr. Monson; that he was glad to find that these men, though blackened in the preamble, were fair again in the body of the Bill. He observed, that this Bill was not, nor could be supported by fair and solid arguments from its promoters, but was like a football kept up between heaven and earth by the buffets it received; that they were endeavouring to regulate things by this Bill, which in a short time would regulate themselves by the same powers that had governed that country hitherto well, and were likely to govern it better; that if the House would but allow a short time, these disorders, few as they were, would be able to correct themselves, that the Company surely had done great things, and would still do greater, if they were suffered to go on. He observed, that the appointment of the Chief Justice and Judges was lodged in the King, but that he could see no reason for that, unless metaphors in discourse were become the solid grounds of argument; and that the only reason the House had been given for such appointment, was from the common phrase, that the King was the foundation of justice; he was sorry to say, that this Bill was forced in at the end of a fatiguing session, by the unfortunate words 'do something,' that the principle of it was an infringement of national right, national faith, and national justice.

No necessity of regulating Company's affairs

Remarks on Supreme Court

V. Protest[1] of 13 Peers[2]

1st, Because the preamble to this Bill, stating defects in the powers of the East India Company, abuses in its administration, and injuries to public

No evidence to support preamble

1 This Protest (dated June 19, 1773) was entered upon the *Journals* of the House of Lords.

2 Abingdon, Torrington, Boyle, Grosvenor, Devonshire,

and commercial credit, ought to have been supported by evidence adapted to the nature of the several matters alleged........

'No effectual provision' for removing abuses

2ndly, Because, if the defects in the charters, and abuses in the administration of the Company, exist in the manner stated in the preamble, no effectual provision is made in the enacting part of the Bill for supplying the one or reforming the other. . . . This mode of vesting ultimately the whole management of the Company's weighty political affairs, their vast revenues, and their extensive commerce, in the King's private discretion, without any provision in the Bill for the intervention of any public body, (either the East India Company, or the Privy Council), or any responsible public minister, is, we insist, not only an high and dangerous violation of the yet unquestioned charters of the Company, but a total subversion of all the principles of the law and constitution of this kingdom :

Violation of Company's *Charter and British Constitution*

Appointment of Governor-General and Councillors

3rdly, Because the election of executive officers in Parliament is plainly unconstitutional, and an example of the most pernicious kind, productive of intrigue and faction, and calculated for extending a corrupt influence in the Crown. It frees Ministers from responsibility, whilst it leaves them all the effect of patronage............

* * * *

5thly, Because the violation of the charter is not justified by the importance of the provisions of this Bill, which operates only to transfer patronage without conferring new powers : it being expressly provided by the Bill, that these powers should be the same as were formerly exercised by the Company's servants under the Company's authority........

6thly, Because the appointing judges by the

Ponsonby, Portland, King, Milton, Richmond, Archer, Rockingham, Fitzwilliam.

nomination of the Crown with large salaries, payable out of the Company's revenue, without the Company's consent either to the appointment or the payment, is an act of flagrant injustice, and an outrage on all the rights of property........

Attack on Company's rights of property

7thly, Because the clause of this Bill which deprives of all share in the management of their own property all proprietors not possessed of £1,000 capital stock, disfranchising, without the assignment of any delinquency or abuse, no less than 1,246 persons legally qualified, is an heinous act of injustice, oppression, and absurdity, and a gross perversion of the high powers entrusted to the Legislature............

Disfranchisement of Company's shareholders

8thly, Because the lengthening the continuance of the Direction, while the body of the proprietors is disfranchised, and the making the Directors dependent on the private will of the King for the exertion of the little authority left to them in India by this Act, tends to pervert all the powers of that great body into mere instruments of the Court, and to extend influence of the worst kind in the worst manner in which it can be exerted.

Increase of influence of Crown

9thly, Because the great principle upon which the Bill has been supported will not only in this, but in all cases, justify every infringement of the national faith, and render Parliamentary sanction the worst of all securities[1]. We never can admit that a mere speculation of political improvement can justify Parliament in taking away rights which it has expressly covenanted to preserve........

Violation of Parliamentary security

1 The City of London petitioned against the Bill on the ground that "the privileges the City of London enjoy stand on the same security as those of the East India Company."

7. LETTERS PATENT ESTABLISHING SUPREME COURT AT FORT WILLIAM[1], 1774.

Preamble

........Whereas by an Act of Parliament, passed in the Thirteenth Year of Our Reign[2], reciting a charter[3]........of........King George the Second,............ by him granted to "The United Company of Merchants of England, trading to the East Indies;" thereby amongst other Things, constituting and establishing Courts of Civil, Criminal, and Ecclesiastical Jurisdiction, at the said United Company's Settlements, at Madraspatnam, Bombay, and Fort William in Bengal; and that the said charter does not sufficiently provide for the due Administration of Justice, in such manner as the State and condition of the Company's Presidency of Fort William in Bengal, so long as the said Company shall remain in the possession of the Territorial Acquisitions, there-in-before mentioned, do and must require........

Now know ye, that we........have thought fit to grant, direct, ordain, and appoint........that there

1 March 26, 1774.

2 Regulating Act.

3 For details about George II's Charter, January 8, 1753, see D. N. Banerjee, *Early Administrative System of the East India Company in Bengal*, Vol. I, pp. 557 ff Its provisions were exactly similar in all respects in the cases of Bengal, Madras and Bombay. The Mayor's Court became a Court of Record. It was authorised "to try, hear and determine, all Civil Suits, Actions, and Pleas, between Party and Party, that shall or may arise, or happen, or that have already arisen, or happened, within the said town or factory of Calcutta, at Fort William, in Bengal, or within any of the factories, subject or subordinate thereunto." But it was not to have any jurisdiction over "such suits or actions" "between the Indian Natives" of Calcutta "only." These were to be "determined among" the parties, unless they "by consent" submitted "the same to the determination of the said Mayor's Court." The President and Council of Fort William were constituted a Court of Record to hear appeals against decisions of the Mayor's Court.

Jurisdiction of the Mayor's Court

shall be, within the Factory of Fort William at Calcutta, in Bengal, a Court of Record, which shall be called "The Supreme Court of Judicature, at Fort William, in Bengal": And we do hereby create, direct, and constitute, the said Supreme Court of Judicature, at Fort William in Bengal, to be a Court of Record.

Establishment of a Court of Record, called Supreme Court

........Chief Justice and (three) Puisne Justices shall be Barristers in England or Ireland, of not less than Five years' standing, to be named and appointed, from Time to Time, by us, Our Heirs and Successors, by Letters Patent.....and they shall all and every of them hold their said offices, severally and respectively, during the pleasure of Us, Our Heirs and Successors, and not otherwise.

Qualifications, appointment and tenure of Judges

And ....the said Chief Justice, and the said Puisne Justices shall severally and respectively be, and they are all and every of them hereby appointed, to be Justices and conservators of the Peace, and Coroners, within and throughout the said Provinces, Districts, and Countries of Bengal, Bahar and Orissa, and every part thereof; and to have such Jurisdiction, and Authority, as Our Justices of Our Court of King's Bench have and may lawfully exercise, within ... England, by the common Law thereof. ..in case they (Chief Justice and Puisne Justices) shall be equally divided, the Chief Justice, or, in his Absence, the Senior Judge present, shall have a double or casting Voice.

Nature of urisdiction

Casting Vote

........all Writs, Summons, Precepts, Rules, Orders, and other Mandatory Process, to be used, issued or awarded, by the said Supreme Court of Judicature,........shall run, and be in the Name and Style of Us, or of Our Heirs and Successors............

Writs, etc to be in King's name

........the said Sheriff, and his Successors,............ are hereby authorized to execute all the Writs,

Summons, Rules, Orders, Warrants, Commands, and Process of the said Supreme Court........and to receive and detain in Prison such Persons as shall be committed to him for that Purpose, by the said Supreme Court........

Sheriff

Original jurisdiction of Supreme Court

........the said Supreme Court ....may and shall have Power and Jurisdiction, and is hereby authorized to hear, examine, try and determine........all Actions and Suits, which shall or may arise, happen, be brought, or promoted, upon or concerning any Trespasses or Injuries, of what Nature or Kind soever, or any Debts, Duties, Demands, Interests or Concerns, of what Nature or Kind soever, or any Rights, Titles, Claims, or Demands, of, in, or to any Houses, Lands, or other Things real or personal, in the several Provinces or Districts, called Bengal, Bahar, and Orissa, or touching the possession, or any Interest or Lien, in or upon the same, and all Pleas, real, personal or mixed, the causes of which shall or may hereafter arise, accrue and grow, or shall have heretofore arisen, accrued and grown, against the said United Company........and against the said Mayor and Aldermen of Calcutta........and against any other of Our Subjects, who shall be resident within the said Provinces, Districts or Countries, called Bengal, Bahar, and Orissa, or who shall have resided there, or who shall have any Debts, Effects, or Estate, real or personal, within the same, and against the Executors and Administrators of such Our Subjects, and against any other Person, who shall, at the Time of such Action being brought, or at the Time when any such Cause of Action shall have accrued, be or have been employed by, or be or have been, directly or indirectly, in the Service of the said United Company, or of the said Mayor and Aldermen, or of any other of Our Subjects : Provided always, that it shall not be competent to the said Supreme Court........to try or determine any Suit or Action,

against any Person, who shall never have been resident in the Provinces of Bengal, Bahar, and Orissa, or any One of them, nor against any Person then resident in Great Britain, or Ireland, unless such Suit or Action, against such Person, so then resident in Great Britain and Ireland, shall be commenced within Two years after the Cause of Action arose, and the sum to be recovered be not of greater value than Thirty Thousand Rupees ; and the said Supreme Court........shall have the like Power and Jurisdiction, and is hereby authorized to hear, examine, try, and determine, all such Causes, Actions, and Suits as aforesaid, arising, growing, and to be brought or promoted against every other Person or Persons whatsoever, Inhabitants of India, residing in the said Provinces, Districts, or Countries of Bengal, Bahar, and Orissa, upon any Contract or Agreement in Writing, entered into by any of the said Inhabitants, with any of His Majesty's Subjects, where the Cause of Action shall exceed the Sum of Five Hundred current Rupees, and when such Inhabitants shall have agreed in the said Contract, that, in case of Dispute, the Matter shall be determined in the said Supreme Court...........

* * * * *

And Whereas Contracts, or Agreements in Writing, may be entered into by some of the Inhabitants of India, residing in the said Provinces or Districts of Bengal, Bahar, and Orissa, or some of them, or some part thereof, with Our British Subjects, or some of them, wherein such Inhabitant and Inhabitants may agree, that, in case of Dispute, the Matter should be heard and determined in the said Supreme Court............,and whereupon a cause or causes of Action may arise, exceeding in Value respectively the sum of Five Hundred current Rupees, and Suits may be brought thereupon, in some of the Courts of Justice, already established in

the said Provinces or Districts, We do hereby further grant, ordain, establish and appoint, that in such cases, it shall be lawful for either Party, before or after Sentence or Judgment pronounced therein, by his, her, or their humble Petition, suggesting such Agreement in Writing as aforesaid, and verifying the same upon Oath, to appeal to the said Supreme Court............and upon such Petition............the said Supreme Court...... ..may, and is hereby authorized to award and issue a writ, or Precept,........directed to the other party or parties, commanding him, her, or them, immediately to surcease proceeding further in such Suit or Suits and thereupon such Supreme Court shall determine thereupon, according to Right and Justice, in like Manner as if no Proceeding had been in such other Court of Justice.

Appellate jurisdiction of Supreme Court

............the said Supreme Court............should also be a Court of Equity, and shall and may have full Power and Authority to administer Justice in a summary Manner, as nearly as may, according to the Rules and Proceedings of Our High Court of Chancery, in Great Britain, and upon a Bill filed, to issue Sub-poenas, and other Process............to compel the Appearance, and Answer upon Oath of the Parties therein complained against, and Obedience to the Decrees and Orders of the said Court of Equity, in such Manner and Form, and to such Effect, as Our High Chancellor of Great Britain doth, or lawfully may, under Our Great Seal of Great Britain.

Supreme Court to be a Court of Equity and to have the power of compelling attendance of parties etc.

............the said Supreme Court............shall also be a Court of Oyer and Terminer, and Gaol Delivery, in and for the Town of Calcutta, and Factory of Fort William in Bengal aforesaid, and the Limits thereof, and the Factories subordinate thereunto ; and shall have the like Power, and Authority, as Commissioners or Justices of Oyer and Terminer, and Gaol Delivery, have or may exercise, in....England, to enquire, by

Supreme Court to be a Court of Oyer and Terminer, and Gaol Delivery

the Oaths of good and sufficient Men, of all Treasons, Murders, and other Felonies, Forgeries, Perjuries, Trespasses, and other Crimes, and Misdemeanors heretofore had, done, or committed, or which shall hereafter be had, done or committed, within the said Town or Factory, and the Limits aforesaid, and the Factories subordinate thereto.......

And whereas Cases may arise, wherein it may be proper to remit the general Severity of the Law, We do hereby authorize and empower the said Supreme Court of Judicature... to reprieve and suspend the Execution of any Capital sentence, wherein there shall appear, in their judgment, a proper occasion for mercy, until Our Pleasure shall be known, and they shall in such case transmit to Us.........a State of the said case, and of the Evidence, and of their Reasons for recommending the Criminal to Our Mercy ; and in the mean Time, they shall cause such Offender to be kept in strict custody, or deliver him or her out to sufficient Mainprise or Bail, as the Circumstances shall seem to require.

Supreme Court may reprieve or suspend execution of sentence.

..........all and every the said Courts[1] and Magistrates[2] shall be subject to the Order and control of the said Supreme Court........in such Sort, Manner, and Form, as the inferior Courts and Magistrates of, and in ....England, are by Law, subject to the order and Control of Our Court of King's Bench ; to which End, the said Supreme Court ....is hereby empowered and authorized to award and issue a Writ or Writs of mandamus certiorari procedendo, or Error, to be prepared in Manner above-mentioned, and directed to such Courts or Magistrates, as the case may require, and to punish any contempt of a wilful Disobedience thereunto, by Fine and Imprisonment.

Courts established by Charter of George II to be subordinate to Supreme Court

1 Court of Requests and Court of Quarter Sessions established by Charter of George II.

2 Justices, Sheriffs and Magistrates appointed by Charter of George II.

Ecclesiastical jurisdiction of Supreme Court

...........the said Supreme Court...........shall be a Court of Ecclesiastical Jurisdiction, and shall have full power and Authority, to administer and execute, within and throughout the said Provinces, Districts, or Countries, called Bengal, Bahar and Orissa and towards and upon Our British Subjects there residing, the Ecclesiastical Law, as the same is now used and exercised in the Diocese of London, so far as the circumstances and Occasions of the said Provinces and People shall admit or require.

Admiralty jurisdiction of Supreme Court

...........the said Supreme Court...........shall be a Court of Admiralty, in and for the said Provinces, Countries, or Districts, of Bengal, Bahar, and Orissa, and all other Territories and Islands adjacent thereunto, and which now are or ought to be dependent thereupon .. ....

Appeal to King-in-Council

..........if any Person shall find him, her, or themselves aggrieved, by any Judgment, Decree, Order, or Rule, of the said Supreme Court . . . . . in any case whatsoever, it shall and may be lawful, for him and them to appeal to Us, Our Heirs or Successors, in Our or their Privy Council . . . . . .

Appeal to King-in-Council in criminal cases

...........in all Indictments, Informations, and Criminal Suits and causes whatsoever, the said Supreme Court .... shall have the full and absolute power and authority to allow, or deny, the Appeal of the Party pretending to be aggrieved, and also to award, order and regulate, the Terms upon which such Appeals shall be allowed, in such cases in which the said Supreme Court ....may think fit to allow such Appeal.

.......the Person or Persons of the Governor-General, or of any member of the Council,.......or

of the Chief Justice, or any of the Justices of the said Supreme Court .... shall not, nor shall any of them respectively, be subject or liable to be arrested, or imprisoned, upon any Action, Suit, or Proceeding in the said Court, except in Cases of Treason or Felony; nor shall the said Supreme Court........be competent to hear, try and determine, any Indictment or Information, against the said Governor-General or any of the said Council, for the Time being, for any Offence, not being Treason or Felony, which the said Governor-General, or any of the said Council, shall or may be charged with having committed, in Bengal, Bahar, or Orissa, any Thing herein before contained to the contrary notwithstanding; but in all such cases above mentioned, wherein a Capias, or Process, for arresting the Body is hereby given and provided, it shall and may be lawful, for the said Supreme Court ....to order the Goods and Estate of such Persons to be seized and sequestered, until he or they respectively shall appear, and yield Obedience to the Judgment, Decree, or other Order or Rule of the said Court.

Provision regarding Governor-General, Councillors, and Judges of Supreme Court

And We do further hereby strictly charge and command all our Governors, Commanders, Magistrates, Officers and Ministers, Civil and Military, and all our faithful and liege subjects whatsoever, in and throughout the said Provinces, Countries or Districts, of Bengal, Bahar and Orissa, and all other Lands, Islands, or Territories, adjacent thereunto, and which are or ought to be dependent thereupon, that in the Execution of the several Powers, Jurisdictions and Authorities, hereby erected, created and made, they be aiding, assisting, and obedient in all Things, unto the said Supreme Court........as they will answer the contrary at their Peril.

All officers and subjects of the King to be obedient to Supreme Court

8. THE SUPREME COURT ON THE POSITION OF THE NAWAB OF BENGAL[1], 1776.

........Since the Death of Meer Jaffier, the Company have guaranteed the *Subadarry* of Bengal. by Three successive Treaties, to his Descendants ....When you wrote your Letter of the 3rd March last, you had it then immediately under your consideration, with the Act of Parliament[2] before you, to give us such Instructions as you thought necessary for our guidance in supporting the Rights of the *Nazim*[3] against the Encroachments of the French, who refused submission to the Laws and Authority of the established Government. You tell us you are determined to assist the Government in preventing the Abuse of the *Firman*[4] Privilege ; that you are engaged by solemn stipulation to support the *Nizamut* ; you direct us to afford the Country Government all necessary Assistance in the Execution of such equitable Laws as may be framed for the protection of the Natives ; that as to the erecting of new Factories, however the French may affect to despise the Nabob, it is with him alone they are to treat on that subject, and should they at any time attempt to establish other Factories than those possessed by France in 1749, you do not hesitate to direct, that we forthwith apply to the Nabob, and use our utmost endeavours to engage him to prevent all such establishments.

Company recognised the *de jure* authority of the Nawab.

It is not possible to mistake your Meaning and intention in giving us the preceding instructions ; you acknowledge the Existence and Authority of the

1 Letter from Governor-General in Council to Court of Directors, January 15, 1776. See Firminger, *Introduction to the Fifth Report*, Chapter I.

2 Regulating Act.

3 Nawab of Bengal.

4 *Farman* of Shah Alam II.

Country Government; you admit the Rights of the *Nazim* vested in the present *Subadar*, and you direct us to support him in the Exercise of them, and to make a new Treaty with him :............the Acts in which you require us to support him, are Acts of Sovereignty.

You must already have observed how inconsistent both the letter and spirit of these instructions are with the Doctrines solemnly delivered by the Judges, in a case[1] on which they thought fit to decide, without any apparent Necessity, upon the whole Rights of the Nabob. Mr. Justice Hyde says, "The Act of Parliament[2] does not consider Mobaruck-ud-Dowla[3] as a sovereign Prince; the jurisdiction of this Court extends over all his Dominions; his situation is not such as will enable him to confer the character of Ambassador."

The Supreme Court treated the Nawab as a 'phantom.'

Mr. Le Maistre says, "With regard to this Phantom, this Man of straw, Mobaruck-ud-Dowla, it is an insult on the understanding of the Court, to have made the question of his sovereignty. But it comes from the Governor-General and Council; I have too much respect for that body to treat it ludicrously, and I confess I cannot consider it seriously."

Mr. Chambers declines giving any direct opinion on the subject.

The whole tendency of the Chief Justice's opinion, is, to shew that the Nabob is a mere empty name, without any real right, or the exercise of any power whatsoever; he expressly says, "That the Agents of the East India Company (meaning the Governor and Council of this Presidency) cannot, by

1 Case of Radhacharan. See I. Banerjee, ***The Supreme Court in Conflict***, pp. 154-163.

2 Regulating Act.

3 Nawab Mubarak-ud-daula.

making the Nabob the instrument, do indirectly what they would not assume to do directly."

We have then the unanimous opinion of the Court, "That neither the East India Company nor their servants, both being subject to the laws of the King of Great Britain, can, by interposing the Name of the Nabob, screen any Criminal from the Justice of the Court;" and this they call an illegal Execution of the Powers of a double Government to defeat the King's Laws.

9. WARREN HASTINGS ON HIS CONFLICT WITH THE COUNCIL,[1] 1776.

'Persistent, unremitting and bitter hostility' between Hastings and the Majority

[Warren Hastings was named in the Regulating Act Governor-General, with Barwell, an experienced Indian officer, as one of his Councillors. There were three other Councillors who were new to India—General Clavering, Monson, Philip Francis These three Councillors embarked, from the very outset, in Barwell's words, upon 'a predetermined, pre-concerted system of opposition' to the Governor-General. A six years' struggle now ensued between Hastings, who was supported by Barwell, and the Majority of the Council. The latter violently condemned the existing system of administration and pursued the Governor-General with personal vindictiveness; moderation was certainly not one of their virtues. As the Regulating Act gave the Governor-General no authority to override his colleagues, he was quite helpless. "For two years, 1774-6, he was steadily outvoted and overruled, and for all practical purposes he had ceased to be Governor-General." In September, 1776, Monson died, and with his own casting vote and Barwell's steady support Hastings now held the mastery against Clavering and Francis. Wheler, who succeeded Monson, usually supported Francis. Hastings became stronger after Clavering's death in August, 1777. Sir Eyre Coote, who succeeded Clavering in 1779, acted inde-

1 Letter to Laurence Sullivan, March 21, 1776. Sullivan was a leading Director, known as "the uncrowned King of Leadenhall", a consistent supporter of Hastings. (See C. H. Philips, *The East India Company*, p. 26).

pendently of Francis. Barwell retired in 1779 and Francis left India in November, 1780. Owing to Sir Eyre Coote's frequent absence from Calcutta on military expeditions, Wheler remained the Governor-General's only colleague. Separated from Francis, Wheler easily submitted to Hastings who, uncontrolled by opposition, crushed Chait Singh of Benares and the Begams of Oudh. John Macpherson joined the Council in September, 1781, and Stables in November, 1782. Their relations with Hastings were not very cordial; but their opposition to Hastings was 'very different from the persistent, unremitting and bitter hostility' of Francis and his supporters.[1]]

'Maxims' followed by Hastings

The maxims which I laid down for my conduct, and by which it was invariably guided, were these :— First, to implant the authority of the Company, and the sovereignty of Great Britain, in the constitution of this country. Secondly, to abolish all secret influence, and make the government itself responsible for all measures, by making them all pass by its avowed authority. Thirdly, to remove all impediments which prevented the complaints of the people from reaching the ears of the supreme administration, or established an independent despotism in its agents. Fourthly, to relieve the *ryots* from oppressive taxes. Fifthly, to introduce a regular system of justice and protection into the country. Sixthly, to relieve the distress of the Company at home; you know how great they were; and pay off their heavy debts here by a uniform and regular mode of collecting their rents, by savings in expenses[2], and by foreign acquisitions of wealth[3]. And lastly, to extend

1 See Weitzmann, *Warren Hastings and Philip Francis*.

2 This probably refers to the reduction of the Nawab's pension from 32 *lakhs* to 16 *lakhs* and the stoppage of the tribute (26 *lakhs*) to the Emperor.

3 By the expression 'foreign acquisitions of wealth' Hastings probably referred to the transactions with Shuja-ud-daula of Oudh (treaty of Benares, September 7, 1773) which brought large financial profits to the Company. See A. L. Srivastava, *Shuja-ud-Daulah*. Vol. II, pp. 220-223.

the political influence of the Company without enlarging their territory or dividing their military strength.

Work of Hastings reversed by the Majority of the Council

The present government has proceeded on principles diametrically opposite to mine. First, they have broken all the arrangements which I made in the Nawab's family in 1772; replaced Mahomed Reza Khan; restored the office of *Naib Suba*; dismissed the Begum from her office[1]........; publicly proclaimed the Nawab's sovereignty and disclaimed that of the Company. Secondly, they have made their own power uncontrolled, and contrived to preclude its operations from public view, by the pretended independency granted to Mahomed Reza Khan.

Charges levelled by the Majority of the Council against Hastings

Thirdly, they have abolished, or rendered of no effect, all the courts of justice, and avow their intentions of restoring the collectorships. Fourthly, they exclaim against me for overcharging the revenue............... Sixthly, they have branded the suspension of the King's[2] tribute with the appellation of violation of public faith; they have called the cession of Kora the sale of others' property; they have called the subsidy which I had fixed with the Vizier[3] at 210,000 rupees (and which they had augmented to 260,000 rupees), and the stipulation for the Rohilla war, a mercenary prostitution of the Company's arms for hire; they have paid off a part of the bonded debt with the means furnished by these acts of injustice, and now lay claim to the whole merit of it, though it is impossible for them to produce a single instance, in the whole period of this administration, of a rupee saved, or a rupee gained, by any measure of theirs,

1 In 1775 Mani Begam was divested of her guardianship over the Nawab and replaced by Muhammad Reza Khan.

2 Shah Alam placed himself under the protection of the Marathas and was escorted by them to Delhi in January, 1772. Hastings then stopped the payment of the Bengal tribute and sold Kora and Allahabad to the Nawab of Oudh.

3 Nawab Shuja-ud-daula of Oudh, *Wazir* of the Mughal Empire.

except the later acquisition of Benares,[1] obtained at the expense of twice the amount of its yearly revenue, which the Nawab of Oudh owes to the Company, and which he can never pay them……

10. WARREN HASTINGS ON THE CONFLICT BETWEEN THE GOVERNOR-GENERAL-IN-COUNCIL AND THE SUPREME COURT,[2] 1776.

[The Supreme Court was established to give effect to the plan of controlling the Company's government by the King's Court. Hastings was alarmed. In 1774 he wrote to a friend, "The court of justice is a dreadful clog on the government"; but as the Chief Justice, Sir Elijah Impey, was 'a man of sense and moderation', Hastings did not anticipate much trouble. In 1775 Impey punished Maharaja Nanda Kumar, a great enemy of Hastings, who was indirectly supported by the Majority in the Council. It is difficult to say whether Nanda Kumar suffered really for having dared to accuse the Governor-General of bribery[3]; but there is no doubt that Hastings acted unconstitutionally, and that the incident revealed a very strong intimacy between the Governor-General and the Chief Justice. In the extract quoted below, written within eight months of Nanda Kumar's death, Hastings speaks of the 'moderation' of the Supreme Court and accuses the Majority in the Council of 'forcing the Court into extremities for the purpose of finding fault with them'. But a shrewd man like him could not shut his eyes to clear difficulties In 1776 he sent to the Directors a plan for amalgamating the Supreme Court and the Company's Courts[4], but this plan was not accepted. Hastings and Impey gradually drifted apart, specially after the establishment of the Governor-General's ascendancy in the Council.]

Hastings and Impey

1 After the death of Shuja-ud-daula his son and successor, Asaf-ud-daula, had to conclude the treaty of Fyzabad, by which the sovereignty of Benares was ceded to the Company. Hastings opposed the treaty, but was outvoted in the Council.

2 Letter to Laurence Sullivan, March 21, 1776. See Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*; and I. Banerjee, *The Supreme Court in Conflict.*

3 See Stephen, *The Story of Nuncomar*; and Beveridge, *The Trial of Nanda Kumar.*

4 See *The Cambridge History of India*, Vol. V, pp. 242-243.

........I assure you that it is scarce possible to have acted with more moderation or caution than Sir Elijah has observed in all cases in which the ordinary process of Supreme Court was likely to affect the collection and management of the public revenue. Indeed, the other judges merit the same testimony in their favour. Had a cordial understanding subsisted between the Court and the Council, much of the inconvenience that has arisen from the writs of the Court would have been avoided, nor would the revenue have been in the least affected by them ; but it seems to have been a maxim of the Board to force the Court into extremities for the purpose of finding fault with them. Yet in many cases the acts of the Court have been, and must continue to be, the unavoidable cause of embarrassment. This is owing to a defect in its constitution. By the limitation of its powers it must ever remain a doubt what is the extent of them, as every man in the provinces is in reality subjected to the authority of the Company. If it was constituted to protect the people from oppression, that design would be entirely frustrated were the Board at liberty to employ agents who should be exempt from its authority ; and you will have seen many instances in the papers which I have sent home of the most glaring acts of oppression committed by the Board which would have produced the ruin of the parties over whom they were exercise but for the protection of the Court. Great complaints have been made of zemindars and others, who are not liable to the jurisdiction of the Court by the plain construction of the Act[1], having been arrested, and some thrown into prison by its warrants. But no attention has been paid to the necessity which there is of bringing the persons who are even excluded by the Act from the jurisdiction of the Court in the same way before it to establish their

Moderation of the Court

Violence of the Council

Defects in the powers of the Court

Good work of the Court

1 The Regulating Act.

exemption. They may plead to its jurisdiction, and obtain their discharge ; but till this is done, I cannot see how it is possible to make the distinction, for if every man who declared himself to be no British subject, nor employed by any, was, in virtue of his own declaration, to be exempted from their authority, all men would make up the plea. Their right to this exemption must be tried to be known, and they must be compelled to appear, or give bail for their appearance, that it may be tried.

Justification of the attitude of the Court

The truth is, that a thing done by halves is worse than if it were not done at all. The powers of the Court must be universal, or it would be better to repeal them altogether. The attempt to make a distinction has introduced the most glaring absurdities and contradictions into the Act[1] which virtually declares the British sovereignty over the provinces even in the qualifications which are made use of to limit it. It is declared that the jurisdiction of the Court shall be exercised over all British subjects, and over all who are, or ever were, in the employ of British subjects, and of course have no relation or dependence on the British sovereignty, which is there usurped over them. Even in the most ordinary process of the Court, the distinction must be broken through or all its acts impeded. The issuing of subpoenas to witnesses is as much an act of authority as warrants of capias, and the parties on whom they are served must be liable to penalties in case of disobedience; yet it would be the extreme of absurdity to say that no man should be compelled to appear as an evidence who was not a British subject, because it would be impossible in such a case to administer justice ; and it is equally a contradiction to say that the persons over whom the authority of the British law is thus exercised are not amenable to it.

Anomalous jurisdiction of the Court

1 The Regulating Act.

11. PLAN OF WARREN HASTINGS TO EXTEND BRITISH INFLUENCE IN INDIA[1], 1777.

Details of the plan

You are already acquainted............with the general system which I wish to be empowered to establish in India, namely, to extend the influence of the British nation to every part of India not too remote from their possessions, without enlarging the circle of their defence or involving them in hazardous or indefinite engagements, and to accept of the allegiance of such of our neighbours as shall sue to be enlisted among the friends and allies of the King of Great Britain. The late Nabob Sujah Dowla, who wanted neither pride nor understanding, would have thought it an honour to be called the *Vizier* of the King of England, and offered at one time to coin siccas in His Majesty's name. Nor was this a mere visionary project; the credit of such a connexion with the sovereign of a power which has for a long time past made so considerable a figure in Hindostan would of itself be a great advantage. But I am afraid that his chief inducement arose from a great defect in our political constitution, of which he had severely felt the bad effects; I mean the rapid succession of persons entrusted........with the rule and administration of the British affairs in this part of our Indian possessions, the consequent want of consistency in their measures, and even in their attachments and engagements; and the caprices to which he was often exposed on the same account........My intention in this digression is to show the advantages which would be derived both by Government and its allies from a direct engagement with them, made with the sanction of the King's name, which would secure it from wanton and licentious violation and render the objects of it more certain and durable. . . .

Case of Oudh

1 Letter to Alexander Elliot, January 12, 1777.

12. THE COURT OF DIRECTORS ON THE SUPREME COURT,[1] 1777.

[In Document Nos. 12 and 13 are described the grievances of the Company against the Supreme Court. Although Macaulay's famous description of the terror created in Bengal by the Supreme Court is not quite accurate, yet "it cannot be denied that the court caused much disturbance and discontent by exercising its powers too rigidly and too pedantically." In 1777 the Supreme Court entertained an action for trespass and false imprisonment against the *Dewan* of the Criminal Court at Dacca and ordered him to be arrested. "All criminal justice," observed the Governor-General in Council, "is at a stand........" In the famous Patna case, 1777-1779, the Supreme Court claimed the right to try actions brought against the Indian judicial officers of the Company for acts done in their official capacity. In the Kasijora case the question at issue was whether the Supreme Court had the right to exercise jurisdiction over every one in Bengal, Bihar and Orissa, and especially over the Zamindars[2]. Impey wrote to Lord Weymouth on March 12, 1780, "The Court does not, nor ever did, claim any jurisdiction over Zamindars, but that their character of Zamindars will not exempt them from the jurisdiction of the Court if they be employed or be directly or indirectly in the service of the East India Company or any other British subject".]

Bad consequences of the exercise of extended jurisdiction by the Supreme Court

In the Papers to which we refer your Lordship, it is stated, that the Jurisdiction exercised by the Supreme Court....... has involved the Servants of the Company, and Officers of the Revenue acting under their Authority, in Circumstances of Difficulty and Distress.

That the Exercise of this Jurisdiction must inevitably tend to render the collection of the Company's Revenues impracticable; to abridge the Power of the Supreme Council and subordinate Factories, and thereby to prevent the carrying of any useful Plan into Execution for settling the country and for

1 Letter to Lord Weymouth, Secretary of State, November 19, 1777.

2 For details about these cases see Stephen, *The Story of Nuncomar*, and I. Banerjee, *The Supreme Court in Conflict*.

establishing the Government thereof on a solid and permanent Foundation........

That another consequence to be feared from the Exercise of this Jurisdiction, is the Alienation of the Minds of the Natives; who cannot, without great Concern, see a Body of Laws introduced which clash with their Constitutional Peculiarities, and with their religious Sentiments and Prejudices; and who must feel t[illegible] ensible alarms on finding themselves exposed to have their Persons seized, and their Laws of Property changed, by the Orders of a Court to whose Jurisdiction they were Strangers........

Nor can we suppose, that those Fears and Apprehensions will appear to your Lordship to be without Foundation, when in the annexed Papers you observe it to be stated,

Charges against the Supreme Court

1. That the Court has extended its Jurisdiction to *Persons* whom it does not appear to have been the Intention of the King or of Parliament, to submit to its Jurisdiction.

2. That it has taken cognizance of *Matters*, both originally and pending the Suit, the exclusive cognizance of which, we humbly conceive it to have been the Intention of the King and Parliament to leave to other Courts.

3. That it has claimed a Right of demanding Evidence, and of inspecting Records, which we conceive it had no Right to demand or inspect.

Under the first Head, your Lordship will observe it is stated,

That Writs have been issued by the Supreme Court into all Parts of the Provinces, for bringing up Zemindars, Farmers, and other Natives, Proprietors of Lands, to the Court of Calcutta, at the Suit, and to answer to complaints, of Natives.

The Second Head of Complaint[1]........

And here your Lordship will allow us to observe, it is in the Governor and Council that the Act[2] ...... has vested, in express terms, *the Ordinary Management and Government of all the Territorial Acquisitions and Revenues in the kingdoms of Bengal, Bahar, and Orissa, in like Manner, to all Intents and Purposes whatsoever, as the same then (at the passing of the Act) were, or at any Time theretofore might have been exercised by the President and Council, or Select Committee, in the said kingdoms.*

Criticism of the claim of Supreme Court to exercise jurisdiction over *Dewani* matters

By those Words, we humbly conceive it to have been the Intention of the Legislature, to vest in the *Dewanee* Courts and Provincial Courts, subject only to the Control of the Governor-General and Council ....the exclusive Jurisdiction, in all causes which merely concern the Revenue, in the same Manner as before the passing this Act the same had been vested in the *Dewanee* Courts or Provincial Councils ; subject

1 Justice Le Maistre declared that "no true Distinction in Reason, in Law, or justice, can or ought to be made between the East India Company as a trading company, and the East India Company as Dewan of these Provinces." With respect to the management of the territorial revenue he declared that, according to the true interpretation of the Regulating Act, the control of the Governor-General in Council was not exclusive, but subject to the jurisdiction of the Supreme Court. He added that it was equally penal for the Company, or for those acting under it, to disobey the orders and mandatory process of the Supreme Court, in matters which merely concerned the revenues, as in any other matter whatsoever. On this declaration the Governor-General in Council commented in a letter to the Court of Directors, January 15, 1776, "........it is plain, that the Company's office of *Dewan* is annihilated; that the country government is subverted ; and that any attempt on our part to exercise or support the powers of either, may involve us and our officers in the guilt and penalty of high treason ; which Mr. Justice Le Maistre......expressly holds out *in Terrorem* to all the Company's servants, and others acting under our authority."

2 Regulating Act.

only to the Controul of the ancient President and Council........

........if it had been the Intention of the King, or of Parliament, to transfer the Jurisdiction of the Company, as *Dewan* of Bengal, Bahar, and Orissa (which Jurisdiction is exercised either by the *Dewanee* Courts, or by the respective Councils of the several Presidencies) to this new Court[1]; or had it been the Intention of the King, or of Parliament, to give to this Court a Participation in, or controul over the others, there would have been clauses containing specific Provisions for that Purpose; whereas, neither the Act nor the Charter[2] have, in this Respect, made any Alteration in the Rights of the Company, or in the Powers heretofore exercised by their Representatives in Matters of Revenue.

Claims of Supreme Court not justified by Act or Charter

* * * * *

Under the third Head of Complaint.... ....the Judges have demanded, as a Matter of Right, the Inspection of the Minutes of the Board ....the Individual Members thereof have been declared responsible for their respective Opinions delivered in Council........

* * * * *

The Consequences of such claims cannot escape your Lordship. If the Power assumed by the Judges, of inspecting the Minutes of the Council, of knowing and publishing the Opinion of each individual Member of the Board, be legal, how is it possible that the Board can act as a Council of State ? If the Doctrine laid down by the Judges, that each Member is answerable for his Opinion, in an Action of Damages to any Man who shall think he suffers by any Resolution of the Board, be Law, how is it possible that the Board should debate with Freedom, or act with Vigor and

Criticism of the claim of Supreme Court to inspect records of Supreme Council

1 Supreme Court.

2 Letters Patent creating the Supreme Court—Document No. 7.

Firmness, when no Member can either debate or act with personal safety ?

The last Head of Complaint............is respecting the Criminal Law of England being in force, and binding, upon the Natives of Bengal, though utterly repugnant to those Laws and Customs by which they have formerly been governed.

Criticism of the claim of Supreme Court to enforce English law in Bengal

...... Maha Rajah Nundcomar, a Native of high Rank in Bengal, was indicted, tried, convicted, and executed, for an Offence which was not capital by the Laws of the Country where the Offence was committed.

Case of Nanda Kumar

The general Principle which the Judges seem to have laid down in their Proceedings against Nundcomar is, that *all* the Criminal Law of England is in force, and binding, upon *all* the Inhabitants within the Circle of their Jurisdiction in Bengal. This Principle, though it may perhaps have been adopted by the ancient Courts of Judicature, established by the Charters of······George 1st and 2nd, would, as we conceive, prove fatal, if pursued through all its consequences, that we might reasonably have expected, that the Judges would at least have softened it in the Application.

For supposing it not to be in the Power of the Judges to mitigate or vary the Punishment affixed by the Criminal Law of England to particular offences, your Lordship will nevertheless perhaps be of Opinion, that as the Prisoner had been thus tried, convicted, and condemned, by a Law of another Country, it would have been a Matter of *Prudence*, at least, in the Court, to have exercised the Power especially given them in the Charter, of respiting the Execution of the Sentence till His Majesty's Pleasure could be known, instead of proceeding to Execution within so short a Space of Time after Conviction ; an Authority which existed nowhere else within that Settlement, and which must be supposed to have been given for

the Purpose of leaving His Majesty the Power of mitigating, in Instances of this Nature, the Severity of the Law.

The Execution of Nundcomar appears to us the more extraordinary, when we consider, that so late as the year 1765, the Inhabitants of Calcutta were exceedingly alarmed at the Circumstance of a Native of Bengal[1] having been capitally convicted upon an indictment for Forgery ; that the Court of Directors petitioned His Majesty in behalf of the Convict, and that Royal clemency was forthwith extended on that Occasion.

Disastrous consequences of enforcement of English law by Supreme Court

We beg your Lordship to consider, what will be the Consequences if the Judges proceed upon the principle of declaring all the other Parts of the Criminal Law of England to be in force in Bengal ? And they must so proceed, if they mean to be consistent with themselves.—Can it be just, or prudent, to introduce all the different Species of Felony, created by that which is called the *Black Act* ? or to involve, as what is called the Coventry Act involves, Offences of different Degrees in one common Punishment ? or to introduce the endless, and almost inexplicable Distinctions, by which certain Acts are or are not Burglary ? Can certain Offenders be transported to His Majesty's Colonies in America ? or sent to work upon the River Thames ? Shall every Man convicted for the First Time of *Bigamy*, which is allowed, protected, nay almost commanded by their Law, be burnt in the Hand if he can read, and hanged if he cannot read ?[2]

1 Radhacharan Mitra

2 Impey wrote to the Earl of Rochford on March 25, 1775, "The Court hath already felt great inconvenience in being obliged to inflict upon offenders the same punishments which are inflicted in England for the same offences. I hope I shall not incur your Lordship's censure......the subjects here

These, my Lord, are some only of the consequences which we conceive must follow, if the Criminal Law of England be suffered to remain in force, and binding upon the Natives of Bengal.—If it were legal to try, to convict, and execute Nundcomar for Forgery, on the Statute of George the Second, it must, as we conceive, be equally legal to try, convict, and to punish the Subahdar of Bengal, and all his Court, for Bigamy, upon the Statute of James the First.

13. THE GOVERNOR-GENERAL-IN-COUNCIL ON THE SUPREME COURT,[1] 1780.

Supreme Court's claim to exercise temporary jurisdiction over Zamindars

We know not indeed n what Way to reconcile a temporary Jurisdiction by Law over Persons, whom the Law declared to be wholly exempt from it ; but were told, that the allowed Jurisdiction could not be effectual without it ; since, if the Act of Parliament[2] was to be taken in its literal construction, and the Court were not allowed to exercise Jurisdiction, but over those whose Subjection to it had been previously ascertained, it could exercise Jurisdiction over none ; because, unless it could compel Persons, who were affirmed to be Objects of its Jurisdiction, to appear

Views of Impey

on which the law is to operate being so different from what they are in England, if I submit to your Lordship's consideration, the propriety of allowing the Supreme Court a discretionary power of condemning an offender convicted of a crime not capital, to such punishment as he shall think his crime shall deserve. Transportation, from the nature of it, is a sentence which in this country cannot be put in execution. Imprisonment, to the inferior indolent Indian, is no punishment ; give him a space to lay upon, rice and water, it is a reward ; fines are very unequal punishments, the poor cannot pay them, and if the person condemned is not of a caste or rank to which imprisonment would bring disgrace, the richest there would not pay the smallest fine to avoid it......"

1 Letter to Court of Directors, January 25, 1780.

2 Regulating Act.

before it, the Question of their subjection to it, or of their Exemption from it, could not be previously ascertained; and the Act itself, which gave them Jurisdiction in certain cases, and over certain characters, would be nugatory........

Supreme Government's objection to temporary jurisdiction

With respect to the Right of the Court, derived from the Necessity of a temporary Jurisdiction over Persons whom the Law has excluded from it, we presume to doubt both the Necessity and the Right dependent on it. If, instead of receiving the ready affidavits, declaring persons to be Objects to their Jurisdiction, the Judges had made it their Practice to examine the Grounds of such Declarations, it would have been easy for them, in any case, to have ascertained, whether or not they were conformable to the Sense of the Charter; or if a Doubt had still remained in their Minds, it might easily have been resolved by an Application to us, to be informed whether the Defendant, in any particular Action, was or was not in our Employ.... ....After such Precautions, every Person resisting their Process would have resisted it at his Peril, and the Aid of Government would always have been ready to enforce it.... ..

Consequences of the exercise of temporary jurisdiction by the Supreme Court

..........It is sufficient for us, that by the Act of Parliament, certain classes of Men in this country are most expressly, and as we understand, assuredly exempted from the Jurisdiction of the Supreme Court, to all Intents and Purposes. If Persons so exempted, must nevertheless obey the Process of the Court; if by not obeying it, they become lawfully subject to Sequestration of their Property, to Fine and Imprisonment, and in short, to all the Penalties usually inflicted for contempt of a lawful Jurisdiction; or, if in Obedience to such Process, a Zamindar, for example. who lives 400 Miles from Calcutta, shall be dragged hither by the Sheriff's Officers, shall be forced to appear before the Court, and wait in Calcutta, and most probably in Jail (since in no case

will Bail be found for Debts, stated for Lacks of Rupees) until his Plea to their Jurisdiction shall be determined, which may be many Months, in what Sense are we to understand the Force and Authority *thus far* exercised over him, if the Judges should at last decide, that he is not subject to their Jurisdiction? Is it Jurisdiction, or is it merely an Act of Power, against which no right can protect him? Under the Operation of such Power, whether lawful or not, we are sure that the Zamindar gains nothing by the Exemption finally acknowledged to be his Right. Of that class of Men, we are perfectly convinced that a very great Majority would be ruined by the steps prescribed to them, in order to establish it. We will here add what would have been the consequences, had not the Government interfered in Support of the Rajah of Cossijurah[1]. It is almost morally certain, that no Persons of sufficient Responsibility could have been found to have been Bail to the Action in so enormous a Sum as Sicca Rupees 3,00,000. The Rajah must therefore have remained a prisoner in the Jail of Calcutta, till a Decision had taken Place on his Plea. It is most probable, that the Period of his Confinement would not have been less than Twelve Months, as the Plaintiff, doubtful of establishing the Defendant to be an Object of the Jurisdiction of the Court, would have used every Means to protract the Suit, in hopes, that the Sufferings of the Rajah in his Person, as well as his Property, would compel him to make overtures of Accommodation; and in all this Time, his Zemindary would have remained in a State of Anarchy, and the collections been either wholly neglected or embezzled; or, to prevent these consequences in part, for the Remedy would only be partial, the Rajah must have been wholly dispossessed, and

Kasijora case

1 For details, see I. Banerjee, *The Supreme Court in Conflict*, Chapter V.

suffered an accumulated injury from necessary Effect of that in which the Act of the Court had already involved him : And this again would have increased the former; for, as a new Authority would have been established in his Country, he would not only have undergone temporary Deprivation, but have been precluded from all Hopes of recovering, either his Inheritance or Liberty, by the Loss of the only Means which he could have of discharging the Debt.

To those who are acquainted with this Country, and the character of its Natives, it is well known, that among the stubborn and immutable Usages of a People, who, by an unheard of Policy, are thus attempted to be dragged within the Pale of our Laws, there are not any that are so intimately blended with their Natures, so interwoven with their very Existence, and a Force upon which were therefore so likely to drive them to Desperation, as those which regard their Women; a Reason, for which, we presume you will think with us, that Policy and Humanity should in all Situations respect them.

Case of Rani Bhabani of Nator

And yet with equal Wonder and Alarm, we have recently seen the mandatory Process of the Court directed to a Woman of the highest caste and Rank (the Ranee of Rajeshahee[1]) who possesses in her own Right, the First great Zemindarry of these Provinces.......

Secluded as Women of her superior Rank are, and equally ignorant of the Language and Purpose of the Process, it were to a certainty Disobeyed. The Court adhering to its Rules, a capias follows, the Execution of which is probably committed........to a Band of armed Ruffians ; her House is pillaged, her Temples polluted, the most secret Recesses of her Family violated, and that Sanctity of character trampled upon, which throughout the East, even in

1 Rani Bhabani of Natore in the district of Rajshahi in Bengal (now in East Pakistan).

times of fiercest hostility, the most barbarous Nations revere in Women.

Happily in this case these Things have not all occurred; but as the indelible Dishonour of public Exposure, and that inexpiable Pollution from the insufferable Sense of which, according to their Mode of thinking, there is no Refuge but in Death, would have followed, if the Plaintiff had not been persuaded to withdraw his Action. We state this as another of those cases, to which we are confident, that a feeling and enlightened Nation could never have intended to stretch the Authority of its Laws.

14. WARREN HASTINGS ON SADAR DEWANI ADALAT[1], 1780

[The plan of offering Impey the presidency of the *Sadar Dewani Adalat* was not without certain practical merits. This *Adalat* was presided over by the Governor-General and Members of the Council, assisted by Indian officers. It exercised appellate civil jurisdiction over the *mofussil* courts in all cases where the disputed amount exceeded Rs. 500. The Governor-General was not a trained and expert judge, nor could his Councillors claim judicial experience. Moreover, the Governor-General had no time to undertake judicial duties; so the *Adalat* hardly sat at all. In 1776 Hastings himself described it as 'having been long since formally abolished'. Under the guidance of an expert judge like Impey the *Adalat* might have regained its vigour and effectively controlled the weak *mofussil* courts.

Criticism of Impey

But this plan to end the 'contest' between the Supreme Court and the Council created suspicions about the motives of Hastings and Impey. As the salary attached to the new post was revocable at the will of the Governor-General and Council, people thought that the Chief Justice was compromising his quarrel with the Council for a money consideration. In Macaulay's words, Impey accepted a bribe, surrendered the independence of the Supreme Court, and became 'rich, quiet and infamous'. The legal adviser of the Company observed, "Impey is found one day summoning the Governor-General and the Council before his tribunal for acts done as Council, and the next accepting emoluments

1 Minute, September 29, 1780.

nearly equal to his original appointment to be held during the pleasure of the same Council". Sir James Stephen, Impey's ablest apologist, observes, "He did undoubtedly weaken, if it is too much to say that he forfeited, his judicial independence."[1] It was extremely unwise to violate the spirit of the Regulating Act by subordinating the King's Court to the Company's Government.

Impeachment of Impey

In 1787 Impey was impeached by Sir Gilbert Elliot, afterwards Earl of Minto, Governor-General of India, 1807-1813. Six charges were brought against him: Nanda Kumar's case; the Patna case; the illegal extension of the jurisdiction of the Supreme Court; the Kasijora case; the acceptance of the presidency of the *Sadar Dewani Adalat*; and the taking of the affidavits in Oudh in connection with Chait Singh's affair. The impeachment failed.]

Functions of *Sadar Dewani Adalat*

.......It (*Sadar Dewani Adalat*) is not only to receive appeals from the decree of the inferior Courts in all causes exceeding a certain amount, but to receive and revise all the proceedings of the inferior Courts, to attend to their conduct, to remedy their defects, and generally to form such new regulations and checks as experience shall prove to be necessary to the purpose of their institution.......

Chief Justice of Supreme Court to be judge of *Sadar Dewani Adalat*

That the Chief Justice (of the Supreme Court) be requested to accept the charge and superintendency of the office of *Sudder Diwani Adalat* under its present regulations, and such other as the Board[2] shall think proper to add to them or to substitute in their stead, and that on his acceptance of it he be appointed to it and styled the judge of the *Sudder Diwani Adalat*.

The want of legal powers, except such as were implied in very doubtful constructions of the Act of Parliament,[3] and the hazards to which the superiors of the *Diwani* Courts are exposed in their own persons from the exercise of their functions, has been the principal cause of their remissness, and equally of the

1 *The Story of Nuncomar*, Vol. II, p. 238.

2 Governor-General's Council.

3 Regulating Act.

disregard which has been in many instances shown to their authority. They will be enabled to act with confidence, nor will any man dare to contest their right of acting when their proceedings are held under the sanction and immediate patronage of the first member of the Supreme Court, and with his participation in the instances of such as are brought in appeal before him and regulated by his instructions. They very much require an instructor, and no one will doubt the superior qualifications of the Chief Justice for such a duty.

Why Chief Justice of Supreme Court should be made judge of *Sadar Dewani Adalat*

It will be the means of lessening the distance between the Board and the Supreme Court, which has perhaps been, more than the undefined powers assumed to each, the cause of the want of that accommodating temper which ought to have influenced their intercourse with each other.[1]

The contest in which we have been unfortunately engaged with the Court bore at one time so alarming a tendency that I believe every member of the Board foreboded the most dangerous consequences to the peace and resources of the Government from them. They are at present composed, but we cannot be certain that the calm will last beyond the actual vacation, since the same grounds and materials of disunion subsist, and the revival of it, at a time like this, added to our other troubles, might, if carried to extremities, prove fatal.

Contest between Supreme Court and Supreme Council to be ended

1 Philip Francis observed, "The Chief Justice cannot be supposed to have changed the opinion which he has at all times so steadily maintained, and those opinions would lead him to submit to the jurisdiction in many instances in which the Council, upon *their* principles, would resist it. Thus the Council, by making the Chief Justice Judge of the *Sudder Dewannee Adaulut*, would *put into the power of the very man with whom they have been contending to give up what they hitherto insisted on as their essential rights.*"

15. THE EAST INDIA COMPANY ACT[1], 1780.

[The object of this Act was to explain and amend the Act of 1773, to give relief to 'certain persons imprisoned at Calcutta in Bengal under a judgment of the Supreme Court of Judicature', and to indemnify 'the Governor-General and Council of Bengal and all officers who have acted under their orders or authority in the undue resistance made to the process of the Supreme Court'. The Patna Case[2] is said to have been directly responsible for several of the provisions of this Act.]

Governor-General and Council not subject to Supreme Court

That the Governor-General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort William in Bengal for or by reason of any act or order, or any other matter, or thing whatsoever counselled, ordered or done by them in their public capacity only, and acting as Governor-General and Council.

Immunity for acts done under order of Governor-General and Council

2. And it is hereby enacted and declared, that, if any person or persons shall be impleaded in any action or process, civil or criminal, in the said Supreme Court for any act or acts done by the order of the said Governor-General and Council in writing, he or they may plead the general issue, and give the said order in evidence ; which said order, with proof that the act or acts done has or have been done according to the purport of the same, shall amount to a sufficient justification of the said acts, and the defendant shall be fully justified, acquitted and discharged from all and every suit, action and process whatsoever, civil or criminal, in the said Court.

Exception

3. Provided always, that with respect to such order or orders of the said Governor-General and Council as do or shall extend to any British subject

1 21 Geo 3, c. 70. See A. K. Ghose, *Laws Affecting the Rights and Liberties of the Indian People*, pp. 2-7.

2 See Stephen, *Nuncomar and Impey*, Vol. II, Chapter XII.

or subjects, the said Court shall have and retain as full and competent jurisdiction as if this Act had never been made.

4. Provided, also, that nothing herein contained shall extend or be construed to extend to discharge or acquit the said Governor-General and Council, jointly or severally, or any other person or persons acting by or under their order, from any complaint, suit or process before any competent court in this kingdom, or give any other authority whatsoever to their acts than acts of the same nature and description had, by the laws and statutes of this kingdom before this Act was made.

16. FOX'S INDIA BILLS, 1783.

[As the Governor-General and Council had been appointed for five years, their period of office would lapse in 1779. Moreover, by the Act of 1744 the Company's privileges were to determine in 1780 unless definitely extended. Thus "there was a possibility of the Government in India and the existence of the Company at home coming to an end almost simultaneously". By Acts of 1779 and 1780 the Company's privileges were extended for a year and it was enacted that no changes were to take place in the offices of Governor-General and Council. In 1781 another Act was passed, which extended the Company's privileges to three years' notice after March 1, 1791, and obliged it to submit to a Secretary of State all dispatches proposed to be sent to India on political, military and revenue matters. In the same year two committees of enquiry were appointed—a Select Committee on the administration of justice in India, presided over by Burke, and a Secret Committee on the causes of the war in the Carnatic, presided over by Dundas. The reports issued by these Committees were unfavourable to the Company. An attempt on the part of the House of Commons to secure the recall of Hastings—who was only removable by the Crown on representation from the Court of Directors—failed owing to the opposition of the Court of Proprietors. It became clear that the Regulating Act had failed to serve its purpose. "It had neither given the State a definite control over the Company, nor the Directors a definite control over their

Parliamentary intervention in Indian affairs.

servants, nor the Governor-General a definite control over his Council, nor the Calcutta Presidency a definite control over Madras and Bombay".[1]

In March, 1783, the Company was again obliged to petition for financial relief. Burke declared that "the relief and reformation of the Company must go together." Three proposals for 'reformation' were put forward. In April, 1783, Dundas introduced a Bill which sought to strengthen the power of the Crown over the Governor-General and the control of the Governor-General both over his own Council and the Presidencies of Madras and Bombay.[2] On November 18, 1783, Fox, who had formed a Coalition with Lord North in April, 1783, introduced two Bills. Pitt introduced his Bill in January, 1784, on his accession to office after the dismissal of the Fox-North Ministry in December, 1783.

Criticism of Fox's Bills

Fox's Bills were violently opposed by the Company and all the Indian interest. Criticism fastened particularly on the first Bill. "It seemed to shift a vast patronage, worth it was calculated £300,000 a year, not from the Company to the Crown, but to a political party who, it was asserted, would use it to debauch Parliament, and gild the chains of a new political slavery. The fact that the seven Commissioners nominated were all supporters of Fox's party lent plausible colour to the charge."[1] The Bill was passed in the House of Commons by a large majority, but was defeated in the House of Lords through the intervention of George III who detested Fox.

Burke's support for Fox's Bills

Burke's speech in support of Fox's Bill was one of the greatest ever delivered by him. He repudiated the theory that the chartered rights of the Company could not be taken away. He declared that monopolistic rights granted by a legislature were, "in the strictest sense, a trust; and it is of the very essence of every trust to be rendered accountable; and even totally to cease, when it substantially varies from the purposes for which alone it could have a lawful existence."

1 *The Cambridge History of India*, Vol. V, p. 194.

2 Malcolm (*Political History of India*, Vol. I, p. 37) described it as a "Bill for appointing a person who, under the high title of Governor-General and Captain-General, should exercise in his own person (under certain checks) complete authority and control over British India."

3 C. Grant Robertson, *England under the Hanoverians*, p. 301.

He described the Company's Government as 'one of the most corrupt and obstructive tyrannies, that probably ever existed in the world.']

I. *A Bill for vesting the Affairs of the East India Company in the hands of certain Commissioners, for the Benefit of the Proprietors and the Public.*

Preamble

Whereas disorders of an alarming nature and magnitude have long prevailed, and do still continue and increase, in the management of the territorial possessions, the revenues, and the commerce of this kingdom in the East Indies ; by means whereof the prosperity of the natives hath been greatly diminished, and the valuable interests of this nation in the said territorial possessions, revenues, and commerce, have been materially impaired, and would probably fall into utter ruin if an immediate and fitting remedy were not provided :

Company's Proprietors and Directors deprived of power

Be it therefore enacted........that the government and management of the territorial possessions, revenues, and commerce of the United Company........,by the Directors and Proprietors of the said Company, or either of them ; and all and singular the powers and authorities of the said Directors and Proprietors, or of any special, or general, or other court thereof, in the ordering and managing the said possessions, revenues, and commerce ; and all elections of Directors of the said United Company, be, and are hereby declared to be, discontinued, for and during the continuance of this Act ; any charter, usage, law, or statute to the contrary notwithstanding.

Appointment of seven Commissioners by Parliament

And be it further enacted.... ...that for the better governing, ordering, and managing the said territorial government, revenues, and commerce, the right hon. William Earl Fitzwilliam[1], the right hon. Frederick Montagu[2], the right hon. George Legge,

1 Chairman.

2 Deputy Chairman.

commonly called Lord Viscount Lewisham, the hon. George Augustus North, Sir Gilbert Elliot, bart., Sir Henry Fletcher, bart, and Robert Gregory, esquire, shall be, and they are hereby constituted and appointed Directors of the said United Company, and shall be, and they are hereby constituted, members of the said Company; and that the said Directors hereby appointed, or any three of them, shall have, use, possess, and exercise all and singular the powers and authorities which have been at any time heretofore vested in, or lawfully exercised by, the said Directors hereby discontinued, or Proprietors, or by the general Court of Proprietors of the said United Company, and all such further and other powers and authorities, and under such directions, and subject to such limitations and restrictions as in this Act or any other Act, the provisions whereof are not hereby altered or repealed, are contained, for the government and management of the said territorial possessions, revenues and commerce of the said United Company, or in any wise relative thereto.

II. *A Bill for the better Government of the Territorial Possessions and Dependencies in India.*

Preamble

Whereas great disorders have prevailed in the government of the British territorial possessions, and dependencies thereof in India; and the Laws and lawful authority of this kingdom have not been duly obeyed by divers of the servants of the United Company······

For remedy whereof in future, be it declared and enacted........that there is not, nor hath been, any privilege, authority, power, pre-eminence, or jurisdiction granted, or meant or intended to be granted, in and by an Act of the 18th year of the reign[1].......or in and by any other Act or Acts whatsoever, or in or

1 Regulating Act.

by any law or usage whatsoever, for the Governor-General and Council of Bengal, or either or any of them, collectively or individually, or any other person whatsoever in the service of the said United Company, which doth or shall in any manner exempt him or them, in the exercise of any powers or authorities whatsoever, from a strict and faithful obedience to the orders and directions which have been issued to or for them from the late or any other Court of Directors, or which shall or may be issued to or for them by the commissioners named and appointed in an Act of this session of Parliament, to manage and govern the affairs of the said United Company.

17. THE EAST INDIA COMPANY ACT,[1] 1784

[After the rejection of Fox's India Bill by the House of Lords the Fox-North Ministry was dismissed by George III (December 18, 1783), who summoned the Younger Pitt to form a Cabinet. Pitt brought in his India Bill in January, 1784. Fox still had a large majority in the House of Commons; but after dissolution Pitt came back with a triumphant majority. The India Bill was re-introduced with slight modifications and passed in August, 1784.]

I. Extracts from the Act.

An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India; and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies.

Preamble

For the better government and security of the territorial possessions of this Kingdom in the East Indies, be it enacted........That it shall and may be lawful to and for the King's Majesty, his Heirs and Successors, by any Commission to be issued under the Great Seal of Great Britain, to nominate and appoint such persons, not ex-

Commissioners to be appointed by the King

1 This Act is generally known as Pitt's India Act. (24 Geo. 3, Sess 2, c. 25).

ceeding six in Number, as His Majesty shall think fit, being of His Majesty's most honourable Privy Council, of whom one of His Majesty's Principal Secretaries of State for the time being, and Chancellor of the Exchequer for the time being, shall be two, to be, and who shall accordingly be, Commissioners for the Affairs of India.

Three Commissioners to form Board

2. And be it further enacted........that any number, not less than three, of the said Commissioners, shall form a Board for executing the several powers which, by this or any other Act, shall be vested in the Commissioners aforesaid.

President of Board

Powers of Board

3. And be it further enacted, that the said Secretary of State, and in his absence, the said Chancellor of the Exchequer, and, in the absence of both of them, the Senior of the said other Commissioners, according to his Rank in Seniority of Appointment, shall preside at, and be President of the said Board; and that the said Commissioners shall have, and they are hereby invested with, the Superintendence and Controul over all the British Territorial Possessions in the East Indies, and over the Affairs of the United Company of Merchants trading thereto, in Manner hereinafter directed.

Casting vote of President

4. And be it further enacted, that in case the Members present at the said Board shall at any Time be equally divided in Opinion, in respect to any Matter depending before them, then, and in every such Case, the then President of the said Board shall have two Voices, or the casting Vote.

King may dismiss and appoint Commissioners.

5. And be it further enacted, that it shall and may be lawful for the King's Majesty, his Heirs and Successors, from Time to Time, at his and their Will and Pleasure, to revoke and determine the Commission aforesaid, and from Time to Time to cause any new Commission or Commissions to be sealed as aforesaid, for appointing any other Person or Persons, being of His Majesty's most Honourable Privy Coun-

cil, of whom one of His Majesty's Principal Secretaries of State, and the Chancellor of the Exchequer for the Time being, shall always be two, to be Commissioners and Members of the said Board, when and so often as His Majesty, his Heirs or Successors, shall think fit, so that the Number of Commissioners therein to be named shall in no wise exceed the aforesaid number of Six.

6. And be it further enacted, that the said Board shall be fully authorised and empowered, from Time to Time, to superintend, direct, and controul, all acts, operations, and concerns, which in any wise relate to the Civil or Military Government or Revenues of the British Territorial Possessions in the East Indies, in the Manner hereinafter directed.

Powers of Board

* * *

10. And, for avoiding any Doubt which may arise, whether the Office or Place of a Commissioner of the said Board, for the affairs of India, or of a Secretary to the said Board, be within any of the Provisions contained in an Act of the sixth Year of the Reign of Queen Anne, intituled, *An act for the Security of Her Majesty's Pesion and Government, and of the Succession of the Crown of Great Bitain in the Protestant Line* ; or whether the Appointment of any such Commissioner or Secretary, being a Member or Members of the House of Commons, shall vacate his or their Seat or Seats in that House ; be it further enacted and declared, that the said respective Offices, Places, or Appointments of a Commissioner, or of the Chief Secretary of the said Board for the Affairs of India, to be made under the Authority of this Act, shall not be deemed or taken to be within the Intent or Purview of the said Act of the sixth year of Queen Anne, whereby to disqualify any such Commissioner or Chief Secretary from being elected, or sitting or voting as a Member of the House of Commons ; nor

Commissioners and Chief Secretary not disqualified from sitting in Parliament

shall the Appointment of any such Commissioner or Chief Secretary, if a Member or Members of the said House, vacate his or their Seat or Seats in the said House; any Thing contained in the said Act of the sixth Year of Queen Anne, or in any other Act, to the contrary notwithstanding.

Relations between Board and Court of Directors

11. And, to the Intent that the said Board may be duly informed of all Transactions of the said Company, in respect to the Management of their Concerns in the East Indies; be it further enacted, that all the Members of the said Board shall, at all convenient Times, have Access to all Papers and Muniments of the said United Company, and shall be furnished with such Extracts or Copies thereof, as they shall from time to time require; and that the Court of Directors of the said United Company shall, and they are hereby required and directed, to deliver to the said Board Copies of all Minutes, Orders, Resolutions, and other Proceedings, of all General and Special Courts of Proprietors of the said Company and of the said Court of Directors, so far as relate to the Civil or Military Government or Revenues of the British Territorial Possessions in the East Indies, within eight Days after the holding of such respective Courts; and also Copies of all dispatches which the said Directors, or any Committee of the said Directors, shall receive from any of their Servants in the East Indies, immediately after the arrival thereof; and also Copies of all Letters, Orders, and Instructions whatsoever, relating to the Civil and Military Government or Revenues of the British Territorial Possessions in the East Indies, proposed to be sent or dispatched by the said Court of Directors, or any Committee of the said Directors, to any of the Servants of the said Company in the East Indies; and that the said Court of Directors of the said United Company shall, and they

are hereby required to, pay due Obedience to, and shall be governed and bound by, such Orders and Directions as they shall from Time to Time receive from the said Board, touching the Civil or Military Government and Revenues of the British Territorial Possessions in the East Indies.

Court of Directors to be guided by instructions from Board

12. And be it further enacted that, within fourteen days after the Receipt of such Copies last-mentioned, the said Board shall return the same to the said Court of Directors, with their Approbation thereof, subscribed by three of the Members of the said Board, or their Reasons at large for disapproving the same, together with Instructions from the said Board to the said Court of Directors in respect thereto; and that the said Court of Directors shall thereupon dispatch and send the Letters, Orders, and Instructions so approved or amended, to their Servants in India, without further Delay, unless, on any Representation made by the said Directors to the said Board, the said Board shall direct any Alterations to be made in such Letters, Orders, or Instructions; and no Letters, Orders, or Instructions, until after such previous Communication thereof to the said Board, shall at any time be sent or dispatched by the said Court of Directors to the East Indies, on any Account or Pretence whatsoever.

Procedure

13. And, for the readier Dispatch of the Civil and Military Concerns of the said United Company, be it further enacted, that whenever the Court of Directors of the said United Company shall neglect to transmit to the said Board their intended Dispatches on any Subject, within fourteen Days after Requisition made, it shall and may be lawful to and for the said Board to prepare and send to the Directors of the East India Company (without waiting for the Receipt of the Copies of Dispatches intended to be sent by the said Court of Directors as aforesaid)

Provision regarding despatches to be sent to India

any Orders or Instructions to any of the Governments or Presidencies aforesaid, concerning the Civil or Military Government of the British Territories and Possessions in the East Indies; and the said Directors shall, and they are hereby required to transmit Dispatches in the usual Form (pursuant to the Tenor of the said Orders and Instructions so transmitted to them) to the respective Govermments and Presidencies in India, unless, on any Representation made by the said Directors to the said Board, touching such Orders or Instructions, the said Board shall direct any Alteration to be made in the same; which Directions the said Court of Directors shall in such Case be bound to conform to.

Right of Directors to appeal to King against Board

14. And be it further enacted, that in case the said Board shall send any Orders or instructions to the said Court of Directors, to be by them transmitted to India, which, in the Opinion of the said Court of Directors, shall relate to Points not connected with the Civil or Military Government and Revenues of the said Territories and Possessions in India, then, and in any such Case, it shall be lawful for the said Court of Directors to apply, by Petition, to His Majesty in Council touching such Orders and Instructions; and His Majesty in Council shall decide whether the same be, or be not, connected with the Civil or Military Government and Revenues of the said Territories and Possessions in India; which Decision shall be final and conclusive.

Provision regarding secret despatches te be sent to India

15. Provided nevertheless, and be it further enacted, that if the said Board shall be of Opinion that the subject matter of any of their Deliberations concerning the levying of War or making of Peace, or treating or negotiating with any of the Native Princes or States in India, shall require Secrecy, it shall and may be lawful for the said Board to send secret Orders and Instructions to the Secret Committee• of the said Court of Directors for the Time

being, who shall thereupon, without disclosing the same, transmit their Orders and Dispatches in the usual Form, according to the Tenor of the said Orders and Instructions of the said Board, to the respective Governments and Presidencies in India; and that the said Governments and Presidencies shall pay a faithful Obedience to such Orders and Dispatches, and shall return their Answers to the same, sealed (under Cover) with their respective Seals, to the said Secret Committee, who shall forthwith communicate such Answers to the said Board.

16. And be it enacted by the Authority aforesaid, that it shall and may be lawful to and for the Court of Directors of the said United Company for the Time being, and they are hereby required from Time to Time, to appoint a Secret Committee, to consist of any Number of the said Directors for the Time being, not exceeding three; which Secret Committee shall, from Time to Time, upon the Receipt of any such secret Orders and Instructions concerning the Levying of War or making of Peace, or treating or negotiating with any of the Native Princes or States of India, from the said Commissioners for the Affairs of India, as are hereinbefore mentioned, transmit to the respective Governments and Presidencies in India a Duplicate or Duplicates of such Orders and Instructions, together with Orders in Writing, signed by them, the Members of the said Secret Committee, to carry the same into Execution; and to all such Orders and Instructions, so transmitted, the several Governments and Presidencies in India are hereby required to pay the same Obedience as if such Orders and Directions had been issued and transmitted by the Court of Directors of the said United Company.

Secret Committee of Directors

Functions of Secret Committee

17. Provided also, and be it further enacted and declared by the Authority aforesaid, that nothing in

Patronage denied to Board

this Act contained shall extend to give unto the said Board the Power of nominating or appointing any of the Servants of the said United Company ; any Thing herein contained to the contrary notwithstanding.

Provision for filling up vacancies in India

18. And be it further enacted, that as soon as the Office of any one of the Counsellors of the Presidency of Fort William in Bengal (other than the Commander-in-Chief) shall become vacant by Death, Removal, or Resignation, the Vacancy so happening shall not be supplied by the said Court of Directors, but the said Supreme Government shall from thenceforward consist of a Governor-General and three Supreme Counsellors only[1]; and that the Commander in-Chief of the Company's Forces in India for the Time being, shall have Voice and Precedence in Council next after the said Governor-General ; any Thing in any former Act of Parliament contained to the contrary notwithstanding.

Provision regarding Madras and Bombay

19. And be it further enacted, that the Government of the several Presidencies and Settlements of Fort Saint George and Bombay shall, after the Commencement of this Act, consist of a Governor or President, and three Counsellors only, of whom the Commander-in-Chief in the said several Settlements for the Time being shall be one, having the like Precedence in Council as in the Presidency of Fort William in Bengal, unless the Commander-in-Chief of the Company's Forces in India shall happen to be present in either of the said Settlements ; and in such Case the said Commander-in-Chief shall be one of the said Counsellors, instead of the Commander-in-Chief

1 An Act passed in 1786 empowered the Governor-General to override the majority of his Council in special cases. The dissentient Councillors were allowed the privilege of recording written protests. This provision was made to satisfy Lord Cornwallis, who had made this a condition of his acceptance of the office of Governor-General. Burke opposed this measure as an attempt 'to introduce an arbitrary and despotic Government in India.'

of such Settlement; and that the said Commander-in-Chief of such Settlement shall during such Time have only a Seat but no Voice in the said Council.

Directors to appoint Governors and Councillors for Madras and Bombay

20. And be it further enacted, that the Court of Directors of the said United Company shall, within the Space of one Calendar Month next after the passing of this Act, nominate and appoint, from amongst the Servants of the said Company in India, or any other Persons, a fit and proper Person to be the Governor of the said Presidency or Settlement of Fort Saint George, and two other fit and proper Persons from amongst the said Servants in India, who together with the Commander-in-Chief at Fort Saint George for the Time being, shall be the Council of the same Presidency or Settlement; and that the said Court of Directors shall also, in like manner, and within the Time aforesaid, nominate and appoint fit and proper Persons to be the Governor and Council of the said Presidency or Settlement of Bombay, under the same Restrictions as are hereinbefore provided in respect to the Governor or President and Council of Fort Saint George.

Casting vote of Governor in Madras and Bombay

21. And be it further enacted, that in case the members present at any of the Boards or Councils of Fort William, Fort Saint George, or Bombay, shall at any Time be equally divided in Opinion in respect to any Matter depending before them, then, and in every such Case, the said Governor-General or the Governor or President, as the Case may be, shall have two Voices, or the casting Vote.

Right of King and Directors to recall Governor-General, Governors, and other servants of the Company

22. And be it further enacted, that it shall and may be lawful to and for the King's Majesty, his Heirs and Successors, by any Writing or Instrument under his or their Sign Manual, countersigned by the said Secretary of State, or for the Court of Directors of the said United Company for the Time being, by Writing under their Hands, to remove or recall the

present or any future Governor-General of Fort William in Bengal, or any of the Members of the Council of Fort William aforesaid, or any of the Governors or Presidents, and Members of the Councils, of the Presidencies or Settlements of Fort St. George and Bombay, or of any other British Settlements in India, or any other Person or Persons holding any Office, Employment, Commission, Civil or Military, under the said United Company in India, for the Time being ; and to vacate and make void all and every or any appointment or appointments of any Person or Persons to any of the Offices or Places aforesaid ; and that all and every the powers and Authorities of the respective Persons so removed or recalled, or whose Appointment shall be so vacated, shall cease or determine at or from such respective Time or Times as in the said Writing or Writings shall be expressed and directed : Provided always, that a Duplicate or Copy of every such Writing or Instrument, under His Majesty's Sign Manual, attested by the said Secretary of State for the Time being, shall, within eight days after the same shall be signed by His Majesty, his Heirs or Successors, be transmitted or delivered, by the said Secretary of State, unto the Chairman or Deputy Chairman for the Time being of the said United Company, to the Intent that the Court of Directors of the said Company may be apprised thereof.

Court of Directors to fill up vacancies in India

23. And be it further enacted, that whenever any Vacancy or Vacancies of the Office of Governor-General or President, or of any Member of the Council, shall happen in any of the Presidencies aforesaid, either by Death, Resignation, or Recall, as aforesaid, then and in such Case the Court of Directors of the said United Company shall proceed to nominate and appoint a fit Person or Persons to supply such

Vacancy or Vacancies from amongst their covenanted Servants in India, except to the Office of Governor-General[1], or the Office of Governor or President of Fort Saint George or Bombay, or of any Commander-in-Chief, to which several Offices the said Court of Directors shall be at Liberty, if they shall think fit, to nominate and appoint any other Person or Persons respectively.

24. Provided always, and be it further enacted, that the said Commanders-in-Chief, at each of the said Presidencies respectively, shall in no Case succeed to the Office of Governor-General or President of Fort William, Fort Saint George, or of Bombay, unless thereunto specially appointed by the Court of Directors of the said United Company : but that in case of the Vacancy of the said Offices of Governor-General or President respectively, when no Person shall be specially appointed to succeed thereunto, the Counsellor next in Rank to such Commander-in-Chief shall succeed to such Office, and hold the same, until some other Person shall be appointed thereunto by the said Court of Directors.

Arrangement for succession

25. Provided always, and be it further enacted, that when and so often as the Court of Directors shall not, within the Space of two calendar Months, to be computed from the Day whereon the Notification of the Vacancy shall have been received by the said Court of Directors, proceed to supply the same, then and in any such Case, and so often as the same shall happen, it shall be lawful for His Majesty, his Heirs and Successors, to constitute and appoint, by writing under his or their Royal Sign Manual (under

King's right to fill up vacancies in India

1 An Act passed in 1786 made the approval of the Crown for the choice of the Governor-General unnecessary, though the Crown still retained the power of recall. The approval of the Crown was again made necessary in 1813.

the same Restrictions and Regulations as are hereinbefore provided, with respect to the Nominations and Appointments made by the said Court of Directors), such Person or Persons as His Majesty, his Heirs and Successors, shall think proper to succeed to and supply the respective Office or Place, Offices or Places, so vacant, or from which any Person or Persons shall be so recalled or removed, or whose Appointment or Appointments shall have been vacated and made void as aforesaid ; and that every Person or Persons, so constituted and appointed, shall have and be invested with the same Powers, Privileges, and Authorities, as if he or they had been nominated and appointed by the said Court of Directors, and shall be subjected to Recall only by the King's Majesty, his Heirs or Successors ; any thing hereincontained to the contrary notwithstanding.

Right of Directors to nominate successors to posts in India

26. And be it further enacted, by the Authority aforesaid, that it shall and may be lawful to and for the Court or Directors of the said United Company, if they shall so think fit, subject to the like Limitations and Restrictions as are hereinbefore enacted respecting the persons qualified to be appointed Members of the Government of the respective Settlements of the said United Company at Fort William, Fort Saint George, and Bombay, to appoint from Time to Time, fit and proper Persons to succeed, in Case of Vacancy, to the several Offices of Governor-General or President of Fort Saint George or Bombay, or Commander-in-Chief of the said Company's Forces at any of the said Settlements, or Member of any of the said Councils ; and such Appointments respectively at their Pleasure again to revoke ; but that no Person so appointed to succeed to any of the said Offices, in case of Vacancy, shall

be entitled to any Salary, Advantage, or Allowance whatsoever, by reason of such Appointment, until such Persons respectively shall take upon themselves the Offices to which they shall so respectively have been appointed.

27. And be it further enacted by the Authority aforesaid, that when and so often as the Number of Members of any of the said Councils of Fort William, Fort Saint George, or Bombay, shall by Death, or Absence, by reason of Sickness or otherwise, for fourteen days be reduced to two, including the Governor-General or President of such Council, the Person who shall stand Senior in such provisional Appointment as is hereinbefore mentioned, or in case there shall be no such Appointment, then the senior Civil Servant of the said Company upon the Spot, shall be called to such Council, and shall have a Voice therein in like Manner as if he had been appointed thereunto by the Court of Directors of the said Company, and shall hold such Office in case the Vacancy shall have happened by Death, until a Successor thereunto shall be appointed by the said Court of Directors; or if such Vacancy shall have happened by Absence or Sickness, until the Return or Recovery of such sick or absent Member; and that all Persons so exercising the Office of a Counsellor at any of the said Presidencies shall be entitled, for the Time he shall so hold the same, to the like Advantages as if he had been thereunto permanently appointed by the said Court of Directors.

Provision for appointment of temporary Councillors

28. And be it further enacted, that no resignation to be made of the offices of the Governor-General, or Governor or President of any of the subordinate settlements, or Commander-in-Chief, or members of the respective Councils of any of the said presidencies in India, shall be deemed or construed to be legal or

Resignation

valid, or shall be accepted as such, unless the same be made by an instrument in writing under the hand of the officer or person resigning the same.

Disability of Court of Proprietors

29. And be it further enacted, that no Order or Resolution of any General Court of the Proprietors of the said United Company shall be available to revoke or rescind, or in any respect to affect, any Act, Order, Resolution, Matter, or Proceeding, of the said Court of Directors, by this Act directed or authorized to be made or done by the said Court, after the same shall have been approved by the said Board, in the Manner hereinbefore directed ; any Law or Usage to the contrary notwithstanding.

30. And be it further enacted, that so much and such Parts of an Act, made in the twenty-first Year of the Reign of his present Majesty, as directs the Court of Directors of the said United Company to deliver to the Commissioners of the Treasury, or to the High Treasurer for the Time being, or to one of His Majesty's Principal Secretaries of State, Copies of any Letters or Orders relating to the Management of the Revenues, or the Civil and Military Affairs of the said Company ; and also all such powers and Authorities given to or vested in the Proprietors and Directors of the said United Company, or in any General or Special Court thereof respectively, in and by any Act of Parliament or Charter, as are contrary or repugnant to this Act, or any Thing herein contained, shall be, and the same are hereby, repealed ;any Thing contained in any Act or Charter, or any Custom or Usage to the contrary notwithstanding.

Control of Bengal over other Presidencies

31. And be it further enacted, that the Governor-General and Council of Fort William aforesaid shall have Power and Authority to superintend, con-

troul, and direct the several Presidencies and Governments now or hereafter to be erected or established in the East Indies by the said United Company, in all such Points as relate to any Transactions with the Country Powers, or to War or Peace, or to the Application of the Revenues or Forces of such Presidencies and Settlements in Time of War, or any such other Points as shall, from Time to Time, be specially referred by the Court of Directors of the said Company to their Superintendence and Controul.

Provision regarding orders sent from Begal to other Presidencies

32. And, in order to prevent the Embarrassment and Difficulty which may arise from any Question, whether the Orders or Instructions of the Governor-General and Council of Fort William relate to other Points than those aforesaid, be it further enacted, that notwithstanding any Doubt which may be entertained by the said Presidencies or Settlements to whom such Orders or Instructions shall be given, respecting the Power of the Governor-General and Council to give such Orders, yet the said Presidencies or Settlements shall be bound to obey such Orders and Directions of the said Governor-General and Council in all Cases whatever, except only where they shall have received positive Orders and Instructions from the said Court of Directors, or from the Secret Committee of the said Court of Directors, repugnant to the Orders and Instructions of the said Governor-General and Council, and not known to the said Governor-General and Council at the Time of dispatching their Orders and Instructions as aforesaid; and the said Governor-General and Council shall, at the Time of transmitting all such Orders and Instructions, transmit therewith the Dates of, and the Times of receiving, the last Dispatches, Orders and Instructions which they have received from the Court of Directors, or from the Secret Committee of the said Court of Directors, or any of the

Points contained there in : and the said Presidencies and Governments, in all Cases where they have received any Orders from the said Court of Directors, or from the Secret Committee of the said Court of Directors, as aforesaid, which they shall deem repugnant to the Orders of the said Governor-General and Council at Fort William, and which were not known to the said Governor-General and Council at the Time of dispatching their Orders and Instructions as aforesaid, shall forthwith transmit Copies of the same, together with an Account of all Resolutions or Orders made by them in consequence thereof, to the Governor-General and Council of Fort William, who shall, after the Receipt of the same, dispatch such further Orders and Instructions to the said Presidencies and Settlements as they may judge necessary thereupon.

Procedure to be adopted by Councils in India

33. And be it further enacted, that the Governor-General and Council of Fort William aforesaid, and the several Presidents and Counsellors of Fort Saint George and Bombay, shall, at their several and respective Boards and Councils, proceed, in the first Place, to the Consideration of such Questions and Business as shall be proposed by the said Governor-General or Presidents respectively ; and when and so often as any Matter or Question shall be propounded at any of the said Boards or Councils, by any of the Counsellors thereof, it shall be competent to the said Governor-General and Presidents respectively, to postpone or adjourn the Discussion of the Matter or Question so propounded to a future Day : provided always, that no such Adjournment shall exceed forty-eight Hours, nor shall the Matter or Question so proposed be adjourned more than twice, without the Consent of the Counsellor who originally proposed the same.

34. And whereas to pursue Schemes of Conquest and Extension of Dominion in India are Measures repugnant to the Wish, the Honour, and Policy of this Nation : be it therefore further enacted by the Authority aforesaid, that it shall not be lawful for the Governor-General and Council of Fort William aforesaid, without the express Command and Authority of the said Court of Directors, or of the Secret Committee of the said Court of Directors, in any Case, except where Hostilities have actually been commenced, or Preparations actually made for the Commencement of Hostilities, against the British Nation in India, or against some of the Princes or States dependent thereon, or whose Territories the said United Company shall be at such Time engaged by any subsisting Treaty to defend or guarantee, either to declare War or commence Hostilities, or enter into any Treaty for making War, against any of the Country Princes or States in India, or any Treaty for guaranteeing the Possessions of any Country Princes or States ; and that in such Case it shall not be lawful for the said Governor-General and Council to declare War or commence Hostilities, or enter into Treaty for making War, against any other Prince or State than such as shall be actually committing Hostilities, or making Preparations as aforesaid, or to make such Treaty for guaranteeing the Possessions of any Prince or State, but upon the Consideration of such Prince or State actually engaging to assist the Company against such Hostilities commenced, or Preparations made as aforesaid ; and in all Cases where Hostilities shall be commenced, or Treaty made, the said Governor-General and Council shall, by the most expeditious Means they can devise, communicate the same unto the said Court of Directors, together with a full State of the Information and Intelligence upon which they shall

Restrictions regarding declaration of war by Bengal

have commenced such Hostilities, or made such Treaties, and their Motives and Reasons for the same at large.

Restrictions regarding declaration of war by subordinate Presidencies

35. And be it further enacted, that it shall not be lawful for the Governor or Presidents, and Counsellors, of Fort Saint George and Bombay, or of any other subordinate Settlement respectively, to make or issue any Order for commencing Hostilities, or levying War, or to negotiate or conclude any Treaty of Peace, or other Treaty, with any Indian Prince or State (except in Cases of sudden Emergency or imminent Danger, when it shall apear Dangerous to postpone such Hostilities or Treaty), unless in pursuance of express Orders from the said Governor-General and Council of Fort William aforesaid, or from the said Court of Directors, or from the Secret Committee of the said Court of Directors; and every such Treaty shall, if possible, contain a Clause for subjecting the same to the Ratification or Rejection of the Governor-General and Council of Fort William aforesaid: And the said Presidents and Counsellors of the said Presidencies and Settlements of Fort Saint George and Bombay, or other subordinate Settlement, are hereby required to yield due Obedience to all such Orders as they shall from Time to Time respectively receive from the said Governor-General and Council of Fort William aforesaid, concerning the Premises.

Penalty for disobedience of orders from Bengal by subordinate Presidencies

36. And be it further enacted, that all and singular the said Presidents and Counsellors who shall wilfully refuse to pay due Obedience to such Orders and Instructions as they shall receive from the said Governor-General and Council of Fort William as aforesaid, shall be liable to be suspended from the Exercise of their respective Offices or Powers, by Order of the said Governor-General and Council of

Fort William ; and all and every of them are hereby further required, constantly and diligently to transmit to the said Governor-General and Council of Fort William aforesaid, true and exact Copies of all Orders, Resolutions, and Acts in Council, of their respective Governments, Presidencies, and Councils, and also Advice and Intelligence of all Transactions and Matters which shall come to their Knowledge, material to be communicated to the Governor-General and Council of Fort William aforesaid, or which the said Governor-General and Council shall from Time to Time require.

* * * *

44. And be it further enacted, that all His Majesty's Subjects, as well Servants of the said United Company as others, shall be, and are hereby declared to be, amenable to all Courts of Justice (both in India and Great Britain) of competent Jurisdiction to try Offences committed in India, for all Acts, Injuries, Wrongs, Oppressions, Trespasses, Misdemeanors, Crimes, and Offences whatsoever, by them or any of them done, or to be done or committed, in any of the Lands or Territories of any Native Prince or State, or against their Persons or Properties, or the Persons or Properties of any of their Subjects or People, in the same Manner as if the same had been done or committed within the Territories directly subject to and under the British Government in India.

British subjects amenable to justice for acts done in India

45. And be it further enacted, that the demanding or receiving of any Sum of Money, or other valuable Thing, as a Gift or Present, or under Colour thereof, whether it be for the Use of the Party receiving the same, or for, or pretended to be for, the Use of the said Company, or of and other Person whomsoever, by any British Subject holding or exercising any Office or Employment under His

Receiving of presents disallowed

Majesty, or the said United Company in the East Indies, shall be deemed and taken to be Extortion, and shall be proceeded against and published as such, under and by virtue of this Act; and the Offender shall also forfeit to the King's Majesty, his Heirs and Successors, the whole Gift or Present so received, or the full Value thereof.

46. Provided always, and be it further enacted, that the Court of Jurisdiction before whom every such offence shall be tried, shall have full Power and Authority to direct the said Present or Gift, or the value thereof, to be restored to the party who gave the same, or to order the whole, or any part thereof, or of any fine which the Court shall set on the offender, to be paid or given to the prosecutor or Informer, as such Court in its Discretion shall think fit.

* * * *

Exeeption

48. Provided always, and be it enacted, that nothing herein contained shall extend, or be construed to extend, to prohibit or prevent any Person exercising the Profession of Counsellor at Law, Physician, or Surgeon, or any Chaplain, from accepting, taking, or receiving Fees, Gratuities, or Rewards, (*bona fide*), in the way of his Profession only.

* * * *

Company's servants, dismissed by any competent Court, not to be restored

51. And be it further enacted, that after Sentence or Judgment of any Court having competent Jurisdiction, whether in Great Britain or in India, against any of the said United Company's Servants, Civil or Military, for any Debt or Penalty due or belonging to the said United Company, or for any Extortion or other Misdemeanor, it shall not be lawful for the said United Company, upon any Pretence, whatsoever, to release or compound such Sentence or Judgment, or to restore any Servant or

Servants of the said Company, who shall have been removed or dismissed from his or their Office or Employment, for or on account of Misbehaviour, by the Sentence of any of the said Courts.

Governor-General may arrest persons suspected of plotting against peace or safety of the country.

53. And be it further enacted, that it shall and may be lawful for the Governor-General of Fort William aforesaid for the Time being, to issue his Warrant under his Hand and Seal, directed to such Police Officers and other Persons as he shall think fit, for securing and detaining in Custody any Person or Persons suspected of carrying on, mediately or immediately, any illicit Correspondence, dangerous to the Peace or Safety of the Settlement, or of the British Possessions in India, with any of the Princes, Rajahs, Zemindars, or other Person or Persons whomsoever having Authority in India, or with the Commanders, Governors, or Presidents of any Factories established in the East Indies by any European Power, contrary to the Rules and Orders of the said Company, or of Governor-General and Council of Fort William aforesaid ; and if, upon Examination, taken upon Oath, in Writing, of any Person or Persons (other than the Person so secured and detained) before the Governor-General and Council of Fort William aforesaid, there shall appear reasonable Grounds for the Charge, the said Governor-General shall be, and is hereby authorized and impowered to commit such Person or Persons above described to safe Custody, and shall within a reasonable Time, not exceeding five Days, cause to be delivered to him or them the Charge or Accusation on which he has or they have been committed ; and the party so confined shall be permitted to deliver in his Defence in Writing, together with a List of such Witnesses as he shall desire to be

examined in Support of his Defence, who shall be examined accordingly in his Presence, and their Examinations taken down in Writing;

and if, notwithstanding such Defence, there shall appear to the said Governor-General and Council reasonable Grounds for the former Proceeding, and for continuing the Confinement, the Party shall remain in Custody until he or they shall be brought to Trial in India, or sent to England for that Purpose and that all such Examinations and Proceedings shall be transmitted to the said Court of Directors by the first Dispatches, and in case such Person or Persons are to be sent to England, the said Governor-General shall, and he is hereby required to cause such Person or Persons to be sent by the first convenient Opportunity, unless such Person or Persons shall be disabled Illness from undertaking the Voyage.

Madras and Bombay Governments to have similar powers

54. And be it further enacted, that the several Presidencies and Governments of Fort Saint George and Bombay, shall have the like Powers, and subject to the same Regulations and Restrictions, to secure and detain Persons suspected of any such illicit Correspondence as aforesaid, within their respective Presidencies and Settlements as are hereby given to the said Governor-General and Council of Fort William.

II. Pitt's Speech on the India Bill[1], 1784.

In pursuance of the notice he had given, Mr. Chancellor Pitt rose to open his new system for the government of India. No one, he said, could be more deeply impressed than he was with the importance of the subject on which he was then going to

1 House of Commons, July 6, 1784. See C. H. Philips, *The East India Company*, p. 32.

enter ; in whatever point of view he considered it, he felt that no subject could possibly be more interesting. In it were involved the prosperity and strength of this country ; the happiness of the natives of those valuable territories in India which belonged to England ; and finally the constitution of England itself. India had at all times been of great consequence to this country, from the resources of opulence and strength it afforded : and that consequence had, of course, increased in proportion to the losses sustained by the dismemberment of other great possessions[1], by which losses, the limits of the empire being more contracted, the remaining territories became more valuable. He was aware that nothing could be more difficult that to digest a plan, which should at once confirm and enlarge the advantages derived to this country from its connexion with India, to render that connexion a blessing to the native Indians, and at the same time preserve inviolate the essence and spirit of our own constitution from the injuries to which this connexion might eventually expose it. Gentlemen would recollect with a degree of horror, to what dangers that happy constitution was exposed last year, when a bill was introduced into Parliament which would have established a system dangerous to everything that Englishmen held dear : they would recollect, that the liberties of this country had nearly suffered shipwreck : the danger, however, was happily over ; and the legistature had now an opportunity to consult about the means the most likely to reconcile and secure the interests of the people of this country, of the people of India, and of the British constitution, as far as it might be affected by the connexion with India. To his lot fell the arduous task of proposing to the House a plan which should

Importance of India to England

Fox's India Bill

1 The reference is to the loss of the American colonies.

answer all these great purposes. He was aware that no plan could be devised, to which some objections would not lie : he was aware that it was not possible to devise a plan that should be free from imperfections ; he should therefore console himself if he should be able to suggest the means of doing the most good to India, and to the East India Company, with the least injury to our constitution. In the arrangements that he should propose, it would be impossible to proceed, without giving to some body of men an accession of power ; but it was his duty to vest it where he should have reason to think it would be least liable to abuse, at the same time that it should be sufficient, and not more than sufficient, for all the purposes for which it should be given ; sufficient to secure to this country the wealth arising from the commerce of the Company ; to the inhabitants of Hindoostan peace and tranquillity ; and to enforce obedience on the part of the servants of the Company, to the orders that should be sent to them from home. In framing such a system, he thought it his duty never to lose sight of this principle—that though no charter could or ought to supersede state necessity, still nothing but absolute necessity could justify a departure from charters. He admitted that charters ought not to stand in the way of the general good and safety of the country ; he admitted that no charter ought to be suffered to stand in the way of a reform, on which the being or welfare of the country depended, but at the same time he contended, that a charter ought never to be invaded, except when the public safety called for its alteration : charters were sacred things. On them depended the property, franchises, and every thing that was dear to Englishmen ; and wantonly, to invade them, would be to unhinge the constitution, and throw the state into anarchy and confusion.

Difficulties of legislating on India

Importance of Charters

With respect to the Indian Company, its affairs were not in a state that called for a revocation of the charter ; the necessity which would justify a revocation did not exist in this case ; and he felt no small degree of satisfaction in the assurance, that at the moment when he had to propose such measures for the government of India, and the conduct of the affairs of the East India Company, as to his judgment appeared most applicable, there no longer existed any danger of the best and most sacred rights of Englishmen being made a sacrifice to the ambitious projects of those who, under the necessity that actually existed had taken the desperate resolution, that nothing short of measures of the most decisive and extreme nature, and measures far exceeding the necessity of the case, could be effectual. He thanked God so great a sacrifice had been escaped ; and he trusted that the sense plainly and incontrovertibly declared to be entertained upon the subject by the majority of the people of England, would prove to be the sense of the majority of that House ; and that they would join with him in opinion, that although it must on all hands be admitted that there did exist a great and urgent necessity for the interference of the legislature with regard to the East India Company and the future government of India, yet that neither state policy nor common prudence called for the legislature's proceeding beyond the limit of the existing necessity, much less of going the length either of destroying the rights of any individuals or bodies of men, established upon the most sacred of all foundations, the express words of solemn charters recognized and confirmed by repeated acts of Parliament, or of directly changing the constitution of the country, and departing from those known principles of government which the wisdom of our ancestors had provided, and which had proved for ages the un-

No necessity of revoking Company's Charter

Should Parliament interfere in Company's affairs ?

State necessity *vs.* private rights

interrupted source of security to the liberties of Englishmen. It was, he said, to be acknowledged on all hands, that no rights of any body of men, however confessed to be rights of the most sacred sort, could supersede state necessity. To that and that alone, they must give way; but then it ought ever to be a rule of conduct with those to whose lot it fell to act under such a necessity, to take care that they do not exceed it. Nothing but such a necessity could warrant any Government in proceeding to do what must be an unwelcome task for all who had any concern in its execution; but when they found themselves obliged to discharge a duty of that irksome nature, they ought to proceed warily, and with all possible tenderness and regard for those with whose rights they felt themselves obliged to interfere; and to be assured, that in endeavouring to do all that their duty required, they did not unnecessarily tear up by the roots and annihilate those rights that were of essential consideration, and ought not to have been touched, because the exigency of the case did not actually require it. And though on a former occasion he had been derided, when he comforted himself with the idea, that, in every departure he should propose from the charter, he should have the consent and concurrence of the Company, he still continued to find great consolation in the reflection, that he did no violence to the Company; for no violence could be said to be done by regulations, to every one of which the Company most cheerfully consented[1].

Changes to be made with Company's consent

He did not find it necessary to create any system absolutely new for the government of our territories

1 In January, 1784, Pitt had a conference with the representatives of the Company. The Bill was actually based on resolutions which were drawn up and accepted by a General Court.

in India ; he should rather endeavour to improve on the system by which those territories were governed at present. The great considerations to be looked to in the regulation of the government of India were three-fold—the commerce of this country with that, and consequently the resources we derived from it ; the interests of the inhabitants there ; and the connexion that the management of both had with our own constitution. Great inconvenience must, under the best possible devised form of government, necessarily arise from the circumstances of any country deriving a considerable part of her resources from a dependency at so great a distance ; and this must also add to the extreme difficulty of governing India from home, because that distance must necessarily prevent the Government at home, and those who filled the executive offices in India, from acting with equal views. For this reason he must repeat what he had before taken the liberty to state, when the subject had been under the consideration of the last Parliament, that as no plan of government for India that human wisdom could suggest, was capable of perfection, so he was far from presuming to think that the plan he should propose would not occasion much difference of opinion, and be liable to a variety of objections. He could only with great humility submit that plan to the judgment of Parliament, which from the maturest consideration, he had been able to select as the most practicable and the most consonant to the present constitution ; conscious at the same time, that it was impossible for him with so many different subjects to attend to, to have found leisure to do justice to a matter of sufficient importance to engross the attention of any man whose mind had been vacant and unoccupied by other objects. To proceed however to the business to be stated, he observed, that it could not be denied, that in

Principle on which legislation on India should be based

every project of government of India there must be an accession of influence somewhere, which it became that House and the people in general always to regard with extreme jealousy. That influence, for obvious reasons, should not be left at home, but might with greater safety be trusted abroad in India, where the executive power must be lodged ; as every man must see the necessity of having a Government active on the spot, yet not independent of this country, but so constituted as to secure obedience to the system of measures dictated from home, while at the same time it was capable of preventing extortion in India, and frustrating the improper views of ambition and despotism. The channel of commerce, he said, must be our guide, as to our future expectations from our connexion with India, since we ought to look to the management of our manufactures there, which must chiefly depend on the establishment of the happiness of the inhabitants, and their being secured in a state of peace and tranquillity. In order to effect this, he declared it would be necessary to give the Government abroad a certain degree of power, subject only to the control of a Board, to be appointed at home, of the nature that he had mentioned, when he had proposed a Bill upon the same subject to the last Parliament. He observed, that in the present consideration there were mixed interests to be regarded as well as mixed objects. Government and commerce were the two great objects to be looked to, while the interest of the East India Company, and the interest of the country, called for their most serious attention. The commerce of the Company exclusively belonged to them ; nor was it till the territorial acquisitions of the Company became considerable, that the public claimed any participation in the advantages arising from the resources of those acquisitions, in the obtaining of which they had borne so large a share.

Necessity of having an 'active Government' in India, which must not be independent of control from England

Commerce to be left to Company

The commerce to and from India, therefore, he meant to leave, where it ought to be left, in the management of the Company.

It had, he remarked, been ever held, that commercial companies could not govern empires; but that was a matter of speculation, which general experience proved to be not true in practice, however universally admitted in theory. The East India Company had conducted its commerce, and governed a vast empire for years, and it was to be remembered that the East India Company was no new establishment; it rested on charters and acts of Parliament; those charters ought undoubtedly to be regarded, and as far as possible, the rights exercised and enjoyed under them ought to be held sacred. But as he had before observed, there were no rights, that by accident or time became fatal to the interests of the public or to the safety of the state, which must not be touched. The matter was, how to connect the constitution of the Company with the national interests: from that regard and attention to chartered rights which he ever should profess, and which every man ought to practise, he had been led rather to consider, whether it was not possible to model the old constitution of the Company, so as to make it answer every view of the state, and every interest of the public, rather than to make a new one; not thinking it necessary to confiscate, annihilate, and destroy, where the purpose could be attained without proceeding to any such violent lengths.

Can commercial Companies govern empires?

Adjustment necessary, not destruction

In the measures to be taken for the future government of India, if they had the Company's concurrence, it would surely be admitted that they took the safest line; that they had pursued the wisest course; and the measures he should propose, were such as the Company agreed to. The control he

Division of powers between Company and Government

had mentioned ought undoubtedly to remain where the constitution had placed all power, in the executive government of the country. The management of the commerce he meant to leave with the Company. The patronage should be separate from the executive government, but be it given where it would, he should propose regulations that would essentially curtail and diminish it, so as to render it as little dangerous as possible. The patronage, however, he would trust with no political set of men whatever. Let it be in India, it would be free from corruption then; and when exercised under the restrictions and limitations he should propose, could, he flattered himself, be attended with no bad consequences.

Board of Control

He enlarged upon these points considerably; and then said, from what he had stated, the House would doubtless observe, that the Bill he meant to move for leave to bring in, was not different from former Bills that he had stated to the House. The great point of it, as far as he had opened it, was the appointment of a separate department of Board of Control, to whom all dispatches should be transmitted, and who should be responsible for what they did, and for what they did not do; who should blink nothing, who should be obliged to act upon every question that came before them, who should not shew any indulgence or partiality, or be guilty of procrastination; who should not have the plea of other business, or in fine, on any pretence, or in any other way whatever, put off or delay the duties of their offices. This institution, though certainly new, was not charged with new duties; because the same powers of control had been given to the Secretaries of State by various acts of Parliament, but unfortunately they had never been exercised, having been suffered to remain dormant. He wished, therefore, to put it out of the power of

that degree of laziness natural to office, any longer to defeat the public interest, by the institution of a Board necessarily active and efficient. He was aware that many persons, who in general disliked, as much as he had done, the violence of the measures proposed in another Bill, approved the idea of making the Board of Commissioners, to be instituted under the authority of that Bill, permanent. He was not of this opinion ; sure he was, that the permanency of such a Board as that Bill proposed to institute, would have added to the mischiefs of it. Such a Board would have been in itself a deviation from the principles of the constitution, and its permanency would have involved it in contradictions to the executive Government that must have been attended with great public inconvenience. An institution to control the government of India must be either totally independent of the executive Government of this country, or it must be subordinate to it. Ought the administration of the day to have no connexion with what was going on ? Let it be remembered that a permanent Board might be hostile to these who held the government at the time ; a view of it, which he trusted, would sufficiently prove that an actual independent permanency in any such Board would be an evil. The existing government ought to be, to a degree, permanent ; but the Indian department must not be independent of that : he meant, therefore, to give it a ground of dependence, upon which all the various departments had a natural and legitimate dependency ; viz., upon the executive Government. Every Government that had no other object than the public good, that was conscious of acting upon no other principles than such as were perfectly constitutional, that was swayed by no motives of a personal, an interested, or an ambitious nature but which possessed a sufficient share of the confidence of the

Should Board be permanent ?

Criticism of Board proposed in Fox's Bill

sovereign, of Parliament, and of the people at large, would, from its conduct, be permanent; and the Indian government would be so of course. Having said this, he animadverted on the danger of once departing from the constitution, by appointing such a commission as the Bill[1] that had passed that House, but which had been rejected by the Lords in the last Parliament, authorized. He remarked, if the practice once obtained, there was no saying to what extent it might be carried, or how often the precedent might be multiplied: admitting it to pass in the instance of the late Bill, they might have proceeded to separate and tear away all the departments from the crown, and put them one after another into so many Parliamentary commissions.

With regard to the objections that had been stated, and the reasons that had been urged to prove that the Company's directors ought not to be excluded from an insight of the papers of the commissioners, he was willing so far to give way to the arguments of that nature, as to permit the court of directors to see the papers of the commissioners; but they were to have no power of objecting: the decision of the commissioners must be final and binding upon the directors. He meant also to invest the commissioners with a power to originate measures, as well as to revise, correct, alter, and control those of the Company: but with regard to such measures as the Commissioners originated, the Company were to be obliged to carry them into execution. This, he observed, took nothing from the Company; since, in fact, it was nothing more than the power to put a negative on their measures, and the power of altering them, acting in another way. With respect to the appointment of the commissioners, he said, it

1 Fox's India Bill.

was meant to be the same as that of persons holding great offices, viz., at the nomination of the crown. It was intended that the Board should consist of none but privy counsellors; but the Board should create no increase of officers, nor impose any new burthens, since he trusted there could be found persons enough who held offices of large emolument, but no great employment, whose leisure would amply allow of their undertaking the duty in question. And this circumstance, he observed, would have a good effect for the future, in rendering it necessary for ministers, when, by way of providing for their families, they appointed to offices hitherto considered as sinecures, to have some other consideration of the ability of the person about to be appointed to fill it; a consideration that could not but occasion the description of offices to which he was alluding, to be well filled for the future. The principal powers of this Board, he recapitulated, would consist in directing what political objects the Company's servants were to pursue, and in recalling such as did not pay obedience to such directions, or be able to give very satisfactory reasons to shew that circumstances rendered disobedience a virtue. The Board would be strictly a Board of control: it would have no power to appoint, nor any patronage; consequently it could have no motive to deviate from its duty.

Appointment of Board of Control

Powers of Board of Control

Thus much, the House would see, related solely to the government at home. With regard to the government abroad the first and leading ideas would be to limit the subsisting patronage, and to produce a unity of system, by investing the Supreme Government to be seated in Bengal, with an effectual control over every other presidency, and by investing that Supreme Government with executive power, and with the disposition of offices in India; but to make it a

Powers of Government of Bengal

matter less invidious, and to prevent the possibility of abuse, gradation and succession should be established as the invariable rule, except in very extraordinary cases : with a view to which, there must be lodged in the Supreme Government, as in every other executive power, a discretion, which every man must see was actually necessary to be vested in an executive power, acting at such an extreme distance from the seat of the supreme government of all, but which was nevertheless to be subject to the control of the Board of superintendency to be established here at home, whose orders in this, as in every other case, the Government of India must obey. Though Bengal was designed to be the Supreme Government, it was not to be the source of influence : that being as much as possible guarded against by the regulations designed to make a part of the Bill. The officers of the Government of Bengal were intended to be left to the nomination of the court of directors, subject to the negative of the crown, and the court of directors were to have the nomination of the officers of all the subordinate Governments, excepting only of the commander-in-chief, who, for various reasons, would remain to be appointed by the crown. He said, it might possibly be argued, that if the crown nominated the commander-in-chief, and had a negative upon the rest of the appointments, all the patronage remained in the hands of Government at home. This, however, was far from being the case ; the patronage of great appointments not being the sort of patronage for the public to entertain a jealousy about, and the other patronage being diffused and placed in Bengal, the influence from it was considerably weakened and diminished ; add to this, all officers going by gradation and succession, would be a forcible check upon the patronage, and tend greatly to its reduction.

Patronage

Having discussed this matter very fully, Mr. Pitt proceeded to state, that much would depend on the manner of administering the government in India, and that his endeavours should be directed to enforce clear and simple principles, as those from which alone a good government could arise. The first and principal object would be to take care to prevent the Government from being ambitious and bent on conquest. Propensities of that nature had already involved India in great expenses, and cost much bloodshed. These, therefore, ought most studiously to be avoided. Commerce was our object, and with a view to its extension, a pacific system should prevail, and a system of defence and conciliation. The Government there ought, therefore, in an especial manner to avoid wars, or entering into alliances likely to create wars. At the same time that he said this, he did not mean to carry the idea so far as to suggest, that the British Government in India was not to pay a due regard to self-defence, to guard against sudden hostilities from the neighbouring powers, and, whenever there was reason to expect an attack, to be in a state of preparation. This was undoubtedly and indispensably necessary ; but whenever such circumstances occurred, the executive power in India was not to content itself with acting there, as the nature of the case might require ; it was also to send immediate advice home of what had happened, what measures had been taken in consequence of it, and of what farther measures were intended to be pursued. He mentioned also the institution of a tribunal to take cognizance of such matters, and state how far such a tribunal should be empowered to act without instructions from home. He next said, that the situation of the Indian princes, in cennexion with our government, and of the number of individuals living immediately under our government, were objects that

Object of government in India

Alliances and wars

Indian Princes

ought to be the subject of an inquiry. The debts due from one Indian prince to another, over whom we had any influence, such as the claims of the Nabob of Arcot upon the Raja of Tanjore, ought undoubtedly to be settled on a permanent footing : this, and the debts of the natives tributary to us, ought also to be the subjects of inquiry. Another object of investigation, and an object of considerable delicacy, was the pretensions and titles of the landholders to the lands at present in their possession : in the adjustment of this particular, much caution must be adopted, and means found that would answer the end of substantial justice, without going the length of rigid right, because he was convinced, and every man at all conversant with Indian affairs must be convinced, that indiscriminate restitution would be as bad as indiscriminate confiscation.

Zamindars

Retrenchment

Another very material regulation, or rather principle of reform, from which solid hopes of providing a surplus adequate to the debt in India might be drawn, was, the retrenchment of our establishments in that country. At present it was a well-known fact, that all our establishments there were very considerably overcharged ; at any rate, therefore, there must be no augmentation suffered ; and in order to prevent the possibility of such an improvident measure, a return of all the establishments must be called for. With regard to the means of reducing them, they ought to be laid before Parliament, and submitted to the determination of both Houses. Every intended increase of the establishment ought also to be submitted to Parliament, and the Company to be immediately restrained from sending out any more inferior servants. He stated that it would be necessary, by proper provisos, to compel the execution of these points : and the better to guard

Control of Parliament over Company's expenditure

against the continuance of that rapacity, plunder, and extortion, which was shocking to the feelings of humanity, and disgraceful to the national character, he proposed to render the Company's servants responsible for what they did in every part of India, and to declare it illegal and punishable, if they, on any pretence whatever, accepted sums of money, or other valuables, from the natives. This would, he hoped, tend effectually to check private corruption. There were, he was aware, a certain species of presents, so much a part of the ceremonies inseparable from the manner of the East, that an attempt to direct that they should not be received, would be utterly impracticable; but even as much as possible to guard against any bad consequences resulting from the continuance of the practice in question, he meant that the Bill should oblige the Company's servants in India to keep an exact and faithful register of all such presents.

Punishment of Company's servants

With regard to those of the Company's servants who did not comply with the directions, the Bill would hold out to them, and to such other directions as should, under the sanction and authority of the Bill, be transmitted to them from home, such persons should be considered as guilty of offences punishable in the degrees stated in the Bill, which should contain a special exception of those guilty of disobedience of orders and other crimes, which from their consequences being of a most fatal tendency, must be punished with great severity[1]. In respect

1 The provision for the punishment of the Company's servants for offences committed in India was bitterly opposed on the ground that it was inquisitorial and violated the Englishman's right of trial by jury. The special tribunal contemplated by Pitt was described by Fox as a "bed of justice, for justice would sleep upon it." By an Act passed

to this part of his subject, the House, he had no doubt, would go along with him in feeling the necessity, and at the same time the extreme difficulty, of providing proper tribunal, before which persons charged with offences committed in India should be tried. He owned he had an extreme partiality to the present system of distributing justice in this country, so much so, that he could not bring himself for a moment to think seriously upon the idea of departing from that system, without the utmost reluctance: without mentioning names, however, or referring to recent instances, every man must acknowledge, that at present we had it not in our power to do justice to the delinquents of India, after their return home. The insufficiency of Parliamentary prosecutions was but too obvious; the necessity for the institution of some other process was, therefore, undeniable. A summary way of proceeding was what had struck him, and he believed, others who had thought much upon the subject, as most advisable; the danger, however, was the example that must arise from any deviation from the established forms of trials in this country, it being perhaps the first, the dearest, and the most essential consideration in the mind of every Englishman, that he held his property and his person in perfect security, from the wise, moderate, and liberal spirit of our laws. Much was to be said with respect to the case in point: either a new process must be instituted or offences equally shocking to humanity, opposite to justice, and contrary to every principle of religion and morality, must continue to prevail unchecked, uncontrolled, and unrestrained. The necessity of the case outweighed the risk and the hazard of the innovation, and when it was considered

Parliamentary prosecutions not enough

in 1786 the proposed tribunal was remodelled, but it was in fact never established.

that those who might go to India hereafter, would know the danger of transgressing before they left England, he trusted it would be admitted that the expedient ought to be tried. Should such a law pass, every man who should go to India in future, would, by so doing, consent to stand in the particular predicament in which the particular law placed him ; and in thus agreeing to give up some of the most essential privileges of his country, he would do no more than a very numerous and honourable body of men did daily, without the smallest impeachment of their characters, or the purity of the motives that impelled their conduct.

Composition of Special Court for trial of Company's officers

Mr. Pitt suggested loosely what his idea of the summary species of trial he meant to authorize was. He said, there must be an exception to the general rules of law ; the trials must be held by special commission ; the court must not be tied down to strict rules of evidence ; but they must be upon their oaths to give judgment conscientiously, and pronounce such judgment as the common law would warrant, if the evidence would reach it. Much, he was aware, would depend on the constitution of the court. His design, therefore, was, that it should be composed of men of known talents, unimpeached character, and high consequence ; that their impartiality should be farther secured by their election being by ballot ; and that a certain number out of the whole nominated should make a court, in order that there might exist the chance of a choice by ballot. The persons to be balloted for, should be some of them from among the judges, some members of the House of Lords, and some members of that House. Such a mixed assemblage, from the very first characters in the kingdom, would leave no room for suspicion, or possible impeachment of justice ; and in order still more

strongly to fortify the subject against injustice, they should not be chosen till the hour of trial, and should then be all sworn. To effect the purposes of the institution of such a tribunal, they should be empowered to take depositions, and receive information, communicated by witnesses who were in India when the delinquent was stated to have committed the offences he might stand charged with ; and farther, they should be judges both of the law and the fact. With regard to the punishments, they should be governed by the punishments the law, as it stood, authorized in case of misdemeanor, *viz.*, fine and imprisonment ; but the extent of these should rest in the discretion of the court, to apportion according to their opinion of the proved enormity of the crime ; and as a farther means of rendering such a tribunal awful, and of giving effect to its plans for preventing the perpetration of crimes shocking to humanity, it should be armed with the power of examining the parties charged as delinquents, by interrogatories as to the value of their effects, in order the better to be able to govern the quantum of the fine to be levied in case of conviction ; it should also be armed with the power of examining the amount of any man's property on his arrival in England from India ; and since purity and abstinence were the objects which every man must desire should characterize the conduct of their countrymen in Asia, the Company should not have it in their power to employ any one of their servants convicted of a misdemeanor while he had been in India, nor should any person be suffered to return to that country after his stay in this beyond a certain limited period.......

Powers of Special Court

III. Fox's Speech on Pitt's India Bill[1], 1784

To sum up my objections to the first part of the Bill, they are these ; it provides for a weak government at home by the division of the power ; and it perpetuates the abuses in India, by giving additional authority to the officers abroad. It is unstatesman-like in its principles ; for it absurdly gives the power of originating measures to one board, and the nomination of officers for the execution of those measures to another. It increases influence without vesting responsibility ; and it operates by dark intrigue, rather than by avowed authority........

Summary of objections

18. BURKE'S SPEECH ON THE IMPEACHMENT OF WARREN HASTINGS[2], 1788.

[Hastings arrived in England in June, 1785. In April, 1786, Burke brought forward his charges, at first 11 in number, afterwards increased to 22. The House of Commons acquitted Hastings on the question of the wars against the Marathas and the Rohillas, but condemned his dealings with Chait Singh and the Begams of Oudh. The trial began in Westminster Hall on February 13, 1788, and lasted till April, 1795. The managers for the Commons were Burke, Fox, Sheridan, Pelham, Windham, Sir Gilbert Elliot[3], Charles Grey, Sir James Erskine and twelve others. Hastings was defended by Law[4], Plumer[5] and Dallas[6] The articles of impeachment as finally presented were 20 in number, most of which dealt with Hastings's relations with Oudh. In 1791 it was decided to drop all the articles of charge except those relating to Chait Singh and the Begams of Oudh, fraudulent contracts, presents and bribes. The final verdict—acquittal on all the articles—was given on April 23, 1795.

1 House of Commons, July 16, 1784,

2 February 15-19, 1788.

3 Afterwards Lord Minto, Governor-General of India.

4 Afterwards Lord Ellenborough.

5 Afterwards Master of the Rolls.

6 Afterwards Chief Justice of the Common Pleas.

The extracts quoted below incorporate Burke's views on the nature of the Company's Government in India and are, therefore, of permanent interest and value]

Sources of Company's powers. (1) British Charters

(2) Mughal Charters

Company's responsibility to England

My Lords, the power which Mr. Hastings is charged with having abused are the powers delegated to him by the East India Company. The East India Company itself acts under two sorts of powers, derived from two sources. The first source of its power is under a charter which the Crown was authorized by act of Parliament to grant. The next is from several grants and charters indeed, as well as that great fundamental charter, which is derived from the Emperor of the Moguls, the person with whose dominions they are chiefly conversant; particularly the great charter by which they acquired the high stewardship of the kingdoms of Bengal, Behar, and Orissa, in 1765. Under those two charters they act. As to the first, it is from that charter that they derive the capacity by which they can be considered as a public body at all, or capable of any public function; it is from thence they acquire the capacity to take any other charter, to acquire any other offices, or to hold any other possessions. This being the root and origin of their power, it makes them responsible to the party from whom that power is derived. As they have emanated from the supreme power of this kingdom, they themselves are responsible—their body as a corporate body, themselves as individuals—and the whole body and train of their servants are responsible, to the high justice of this kingdom. In delegating great power to the India Company, this kingdom has not released its sovereignty. On the contrary, its responsibility is increased by the greatness and sacredness of the power given. For this power they are and must be responsible; and I hope this day your lordships will show that this nation

never did give a power without imposing a proportionable degree of responsibiliy.

As to the other power, which they derived from the Mogul empire by various charters from that crown, and particularly by the charter of 1765, by which they obtained the office of lord high steward, as I said, or *diwan*, of the kingdoms of Bengal, Behar and Orissa, by that charter they bound themselves, and bound exclusively all their servants, to perform all the duties belonging to that new office. And by the ties belonging to that new relation they were bound to observe the laws, rights, usages and customs, of the natives, and to pursue their benefit in all things; which was the nature, institution, and purpose, of the office which they received. If the power of the sovereign from whom they derived these powers should be by any misfortune in human affairs annihilated or suspended, the duty of the people below, which they acquired under his charter, is not suspended, is not annihilated, but remains in all its force and, for the responsibility, they are thrown back upon that country from whence their original power, and along with it their responsibility, both emanated in one and the same act. For when the Company acquired that office in India, an English corporation became an integral part of the Mogul empire. When Great Britain assented to that grant virtually, and afterwards took advantage of it, Great Britain made a virtual act of union with that country, by which they bound themselves as securities for their subjects, to preserve the people in all rights, laws and liberties, which their natural original sovereign was bound to enforce, if he had been in a condition to enforce it. So that the two duties flowing from two different sources are now united in one, and come to have justice called for them at the bar of this House before

Company's responsibility arising out of the assumption of *Dewani*

Company's responsibility to England for *Dewani* duties

the supreme royal justice of this kingdom, from whence originally their powers were derived.

Growth of Company's power and jurisdiction

Your lordships will recollect that the East India Company ....had its origin about the latter end of the reign of Elizabeth[1], a period when all sorts of companies, inventions, and monopolies were in fashion And at that time the Company was sent out with large, extensive powers for increasing the commerce and the honour of this country ... But their powers were under that charter confined to commercial affairs. By degrees, as the theatre of the operation was distant, as its intercourse was with many great, some barbarous, and all of them armed nations, where not only the sovereign but the subjects were also armed in all places, it was found necessary to enlarge their powers. The first power they obtained was a power of naval discipline in their ships—a power which has been since dropped. The next was a power of law martial. The next was a power of civil, and to a degree of criminal, jurisdiction within their own factory, within their own settlements, over their own people and their own servants. The next was—and there was a stretch indeed—the power of peace and war; those great, high prerogatives of sovereignty which never were known before to be parted with to any subjects. But those sovereign powers were given to the East India Company. So that when it had acquired them all, which it did about the end of the reign of Charles the Second, the East India Company did not seem to be merely a Company formed for the extension of the British commerce, but in reality a delegation of the whole power and sovereignty of this kingdom sent into the East. In that light the Company began undoubtedly to be considered, as a

Company as a sovereign Power

1 See Keith, *A Constitutional History of India*, Chapter I.

subordinate sovereign power ; that is, sovereign with regard to the objects which it touched, subordinate with regard to the power from whence this great trust was derived[1]........ ...the constitution of the Company began in commerce and ended in empire... ....it became that thing which was supposed by the Roman law so unsuitable—the same power was a trader, the same power was a lord.

Mercantile character of the Company's officials

In this situation, the India Company, however, still preserved traces of its original mercantile character, and the whole exterior order of its service is still carried on upon a mercantile plan and mercantile principles : in fact, it is a state in the disguise of a merchant, a great public office in the disguise of a counting-house. Accordingly the whole order and series............is commercial : while the principal, inward, real part of the Company is entirely political. Accordingly the Company's service.......... ....is commercial.[2]

Gradation of Company's servants

In the first place, all the persons who go abroad in the Company's service enter as clerks in the counting house, and are called by a name to correspond to it—writers. In that condition they are obliged to serve five years. The next step is that of a factor, in which they are obliged to serve three years. The next step they take is that of a junior merchant, in which they are obliged to serve three years more. Then they become a senior merchant, which is the highest stage of advance in the Company's service, as a rank by

1 For the political status of the chartered companies, see Lawrence, *Principles of International Law*, pp. 66-69. Lawrence says, "Like Janus of old, it (*i. e.*, a chartered company) has two faces. On that which looks towards the native tribes all the lineaments and attributes of sovereignty are majestically outlined. On that which is turned towards the United Kingdom is written subordination and submission".

2 See A. K. Ghosal, *The Civil Service in India*.

which they had pretensions, before the year 1774, to the Council, to the succession of the Presidency, and to whatever other honours the Company has to bestow............

Defects of Company's administration

My lords, there is something peculiar in the service of the East India Company, and different from that of any other nation that has ever transferred its power from one country to another. The East India Company in India is not the British nation........ Nobody can go there that does not go in its service. Therefore the English nation in India is nothing but a seminary for the succession of officers. They are a nation of placemen. They are a republic, a commonwealth, without a people. They are a state made up wholly of magistrates. The consequence of which is, that there is no people to control, to watch, to balance against the power of office. The power of office, so far as the English nation is concerned, is the sole power in the country. There is no corrective upon it whatever. The consequence of which is, that, being a kingdom of magistrates, the *esprit de corps* is strong in it—the spirit of the body by which they consider themselves as having a common interest, and a common interest, separated both from the country that sent them out and from the country in which they are, and where there is no control by persons who understand their language, who understand their manners, or can apply their conduct to the laws of the country. Such control does not exist in India. Therefore confederacy is easy, and has been general among them ; and therefore your lordships are not to expect that that should happen in such a body which never happened in the world in any body or corporation, namely, that they should ever be a proper check upon themselves : it is not in the nature of things ....And out of that has issued a series of

(1) Absence of control

abuses, at the head of which Mr. Hastings has put himself, against the authority of the East India Company at home and every authority in this country.

My lords, the next circumstance is—and which is curious too—that the emoluments of office do not in any degree correspond with the trust. For, under the name of junior merchant, and senior merchant, and writer, and those other little names of a counting house, you have great magistrates; you have the administrators of revenues truly royal; you have judges civil, and in a great degree criminal, who pass judgments upon the greatest properties of the country. You have all these under these names; and the emoluments that belong to them are so weak, so inadequate to the dignity of the character, that it is impossible—I may say of that service that it is absolutely impossible—for the subordinate parts of it to exist, to hope to exist, as Englishmen who look at their home as their ultimate resource—to exist in a state of incorruption.... ...

(2) Corruption

My lord, the next circumstance which distinguishes the East India Company is the youth of the persons who are employed in the system of that service. They have almost universally been sent out at that period of life, to begin their progress and career in active life and in the use of power, which in all other places has been employed in the course of a rigid education. They have been sent there in fact ....with a perilous independence, with too inordinate expectations, and with boundless power. They are schoolboys without tutors; they are minors without guardians. The world is let loose upon them with all its temptations; and they are let loose upon the world, with all the powers that despotism can give. This is the situation of the Company's servants.

(3) Inexperience of officers

(4) Lack of properl equipment for judicial work

There is one thing that is remarkable. They are to exercise.... ....high judicial powers—without the smallest study of any law, either general or municipal. It is made a rule in the service ....that the judicial character, which is the last in study and the last in professional experience, that to which all professional men ultimately look up, is the first experimental situation of a Company's servant ; and it is expressly said that the office and situation of a judge are to be filled by the junior servants of the Company. And, as the emolument is not equal to that of other situations, the judicial service is to be taken as *in transitu* —as a passage to other things ; and as soon as a man has supplied the defects of his education by the advantage of experience, he is immediately translated to another situation, and another young man is sent there to learn, at the expense of the properties of India, to fill a situation which he is not fit to fill.

So with regard to the other situations. They are situations of great statesmen, which undoubtedly, according to the practice of the world, require rather a large converse with men, to fill properly, and much intercourse of life, than the study of books—though that has its eminent service We know too that, in the habits of civilized life, in cultivated society, there is imbibed by men a good deal of the solid practice of government, of the true maxims of state, and everything that enables a man to serve his country. But these men are sent over to exercise of functions at which a statesman here would tremble, without any study, without any of that sort of experience which forms men gradually and insensibly to great affairs. These men are sent over to India without maturity, without experience, without knowledge or habits in cultivated life, to perform such functions which........the greatest statesmen are hardly equal to.

Officers' lack of wisdom and experience

My lords, by means of this bad system of things it has so happened, and does happen, that the very laws we have made, the covenants the Company has got its servants to enter into, and the orders that have been given, have proved........most noxious and mischievous to the country, instead of beneficial.......

All laws practically nullified by above defects

19. CORNWALLIS ON INTERFERENCE OF DIRECTORS IN APPOINTMENTS OF OFFICERS, 1789.[1]

............I must freely acknowledge that before I accepted the arduous task of governing this country, I did understand that the practice of naming persons from England, to succeed to offices of great trust and importance to the public welfare in this country, without either knowing or regarding whether such persons were in any degree qualified for such offices, was entirely done away. If unfortunately so pernicious a system should be again revived, I should feel myself obliged to request that some other person might immediately take from me the responsibility of governing these extensive dominions, that I might preserve my own character, and not be a witness to the ruin of the interests of my country.[2]

20. CORNWALLIS ON INSUBORDINATION OF MADRAS GOVERNMENT,[3] 1790.

The Members of the Board were apprised on the day after the accounts arrived from Madras, that Tippo Sultan had committed actual hostilities against our ally the Rajah of Travancore ; that in the critical

1 Letter to John Woodhouse, Director of the Company, August 10, 1789. For the full text of the letter, see Ross, *Cornwallis Correspondence*, Vol I, pp. 420-421.

2 Dundas supported Cornwallis See C. H. Philips. *The East India Company*, p. 63.

3 Minute, February 5, 1790.

situation in which the Company's affairs appeared to be in the Carnatic, I looked upon it as a duty which I owed to my country, to lay aside all considerations of my own personal ease or responsibility, or even of what the existing laws might specifically authorise, and to determine immediately to proceed to the coast as soon as might be possible, to take a temporary charge of the Civil and Military affairs at the Presidency of Fort St. George.

Decision of Lord Cornwallis to take temporary charge of civil and military affairs at Madras

I have already communicated to the Board that, exclusive of other reasons, I thought myself called upon to take so decided a step, from its being consistent with my knowledge that there was not a sufficient harmony and mutual confidence between the Civil and Military Departments .. ..

Causes: (1) Lack of harmony between civil and military departments at Madras

* * * *

The Board will likewise be sensible, that the inattention, almost amounting to disregard, which has been shown by the Madras Government to some of our late instructions on points of great importance, is highly deserving of our severe reprehension,[1] and could not fail to operate as an additional reason in my mind for entertaining great doubts of the good disposition or ability of that Government to support and maintain the public interests and honour at this critical period.

(2) Insubordination of Madras Government

............Upon the ground of state necessity, it was my intention to take the responsibility of an irregular measure upon myself, and to propose that the Board should invest me with full powers to take a temporary charge of the Civil and Military affairs at the Presidency of Fort St. George, by exercising the functions of Governor as well as those of Commander-in-Chief.

1 See Ross, *Cornwallis Correspondence*, Vol I. pp. 477-480, Vol. II, pp. 10-13, 480-483.

out of their hands, but I know that great changes are hazardous in all popular Governments, and as the paltry patronage of sending out a few writers is of no value to such an administration as Mr. Pitt's, I should recommend it to your serious consideration, whether it would not be wiser....... to tie their hands from doing material mischief without meddling with their imperial dignity or their power of naming writers, and not to encounter the furious clamour that will be raised against annexing the patronage of India to the influence of the Crown, except in cases of the most absolute necessity.

Patronage should be left to Directors.

That a Court of Directors formed of such materials as the present, can never, when left to themselves, conduct any branch of the business of this country properly, I will readily admit, but under certain restrictions, and when better constituted, it might prove an useful check on the ambitions or corrupt designs of some future Minister[1]. In order, however, to enable such Directors to do this negative good, or to prevent their doing much positive evil, they should have a circumscribed management of the whole, and not a permission to ruin uncontrolled, the commercial advantages which Britain should derive from her Asiatic territories.

Reformed Court of Directors may be a check on corrupt Ministers.

It will of course have been represented to you that the India Company formerly was supported by its commerce alone, and that it was then richer than it is at present, and that when their Directors have no longer any business with governing empires, they may again become as thrifty merchants as heretofore. I am persuaded, however, that experience would give a contradiction to that theory, for if they

Criticism of the view that Company's relief from administrative duties will promote commerce

1 Disgusted with the conduct of the Directors, Lord Cornwallis wrote to Dundas on March 4, 1792, "If the Court of Directors cannot be controlled, I retract my opinion in favour of their continuance after the expiration of the Charter"

should not have lost their commercial talents by having been Emperors, this country is totally changed by being under their dominion. There are now so many Europeans residing in India, there is such a competition at every aurung of any consequence, that in my opinion even an upright Board of Trade sitting at Calcutta could not make advantageous contracts, or prevent the manufactures from being debased; and therefore that unless the Company have able and active Residents at the different factories, and unless those Residents are prevented by the power of Government from cheating them as they formerly did, London would no longer be the principal mart for the choicest commodities of India.

If the proposed separation was to take place, not a man of credit or character would stay in the Company's service if he could avoid it, and those who did remain, or others who might be hereafter appointed, would be soon looked upon as an inferior class of people, to the servants acting under appointments from His Majesty.

The contempt with which they would be treated would not pass unobserved by the natives, and would preclude the possibility of their being of essential use, even if they were not deficient in character or commercial abilities, and upon the supposition that the Company could afford to pay them liberally for their services.

When you add to the evils which I have described and which no man acquainted with this country will think fictitious, the jobbing that must prevail at the India House in a department which is in a manner given up to plunder, you will not, I am sure, think that I have gone too far in prophesying the bankruptcy of the Company.

In answer to this statement of the impossibility of the Company's carrying on the trade, when all the other parts of the administration of the country are taken into the hands of Government, it may be said by people who have reflected but little on the subject: if the Company cannot carry on the trade, throw it open to all adventurers. To that mode I should have still greater objections, as it would render it very difficult for Government to prevent this unfortunate country from being overrun by desperate speculators from all parts of the British dominions. The manufactures would soon go to ruin, and the exports, which would annually diminish in value, would be sent indiscriminately to the different countries of Europe.

Should Company be deprived of commercial monopoly?

Although I can see no kind of objection to your opening the export trade from Britain to this country as much as you please, I cannot bring myself to believe that any person well acquainted with the manners of the natives, and with the internal state of this country, would seriously propose to throw the export trade from India entirely open, because it must necessarily come previously under consideration, whether the surplus revenue could be remitted by bills of exchange, and whether a more efficacious mode can be devised for securing the greatest possible advantages from this country to the British Government and to the nation at large, than by transmitting yearly a valuable investment of the best goods that Hindostan can afford, which will not only furnish a large sum in duties to the State, but bring foreign purchasers from all quarters to the London market. We have made our investments these last two years under every possible local disadvantage, *viz.*, the exorbitant price of grain and cotton, the total failure of the silk, and the dreadful famine and inundations

Economic effects of throwing export trade from India open to adventurers

in the Dacca district; yet if you could get Mr. Scott[1] the Director, or some other person who would make a fair report, to enquire into the merits of these investments, I have no doubt of its appearing that the Company have not for many years received an investment of so good quality, or one that would have been likely to have afforded so large a profit, if besides all other disadvantages, the India sales in London had not been considerably injured by the troubles in France and by the war in other parts of Europe, as well as by the powerful competition of the British manufactures.

As the new system will only take place when the rights of the present Company cease, you cannot be charged with a violation of charters, and the attacks of the Opposition in Parliament will therefore be confined to an examination of its expediency and efficacy; I fancy I need hardly repeat to you that they would above all things avail themselves of any apparent attempt on your part to give an increase of patronage to the Crown, which could not be justified on the soundest constitutional principles, or on the ground of evident necessity, and would make use of it to misrepresent your intentions and principles, and to endeavour to inflame the minds of the nation against you.

Question of patronage

An addition of patronage to the Crown, to a certain degree, will however in my opinion be not only a justifiable measure, but absolutely necessary for the future good government of this country. But according to my judgment, a renewal of the Company's charter for the management of the territorial revenues and the commerce of India for a limited

Charter should be renewed for a limited period.

1 David Scott, Director of the Company for many years, and Chairman in 1796 and 1801. See Philips, *The East India Company*, pp. 71-72.

time (for instance ten or fifteen years), and under such stipulations as it may be thought proper to annex as conditions, would be the wisest foundation for your plan, both for your own sakes as Ministers, and as being best calculated for securing the greatest possible advantages to Britain from her Indian possessions, and least likely to injure the essential principles of our own Constitution.

Number of Directors should be reduced

The present Court of Directors is so numerous, and the responsibility for public conduct which falls to the share of each individual is so small, that it can have no great weight with any of them, and the participation in a profitable contract, or the means of serving friends or providing for relations, must always more than compensate to them for the loss that they may sustain by any fluctuation that may happen in the market-price of the stock which constitutes their qualifications. I should therefore think that it would be very useful to the public, to reduce the number of Directors to twelve, or to nine; and if handsome salaries could be annexed to those situations, I should be clear for adopting means for their being prohibited from having an interest directly or indirectly in contracts, or in any commercial transactions whatever, in which the Company may have the smallest concern.

Who should appoint and recall Governors, Commanders-in-Chief, and Members of Council?

At the same time, however, if one or both of these points should be carried, I would not by any means recommend that they should retain the power of appointing Governors, Commanders-in-Chief, or Members of Council, at any of the Presidencies; the honour and interest of the nation, the fate of our fleets and armies, being too deeply staked on the conduct of the persons holding the above-mentioned offices, to render it safe to trust their nominations in any other hands but those of the executive Govern-

ment of Britain. But as this measure, though not in fact deviating very widely from the existing arrangement, by which the King has the power of recalling those officers, would at first appear a strong one, and would be vehemently opposed, I would give it every qualification that the welfare and security of the country could admit of I would establish it by law, that the choice of the Civil Members of Council should be limited to Company's servants of a certain standing (at least twelve years), which would in the mind of every candid person leave very little room in respect to them for ministerial patronage, and it should be left to the Court of Directors to frame such general regulations for the appointment to offices in India, as should be consistent with the selection of capable men, and to establish the strictest system that they can devise of check and controul upon every article of expenditure at the different Presidencies.

I would likewise recommend that it should be clearly understood and declared, that the Court of Directors should have a right to expect that His Majesty's Ministers would pay the greatest attention to all their representations respecting the conduct of the Governors, Commanders-in-Chief, and Councillors ; and that in case satisfactory redress should not be given to any of their complaints of that nature, that they should have a right to insist upon the recall of any Governor, Commander-in-Chief, or Councillor whom they should name, and that the utmost facility should be given to them to institute prosecutions against such Governors, &c, whose conduct may appear to them to have been culpable, before the Court of Judicature which has been established by Act of Parliament for the trial of Indian delinquents.

In regard to the Military arrangement, I am clearly of opinion that the European troops should

All European troops should belong to the Crown

all belong to the King, for experience has shown that the Company cannot keep up an efficient European force in India; this is a fact so notorious, that no military man who has been in this country will venture to deny it, and I do not care how strongly I am quoted as authority for it.

The circumstances, however, of the native troops are very different. It is highly expedient, and indeed absolutely necessary for the public good, that the officers who are destined to serve in those corps, should come out at an early period of life and devote themselves entirely to the Indian Service; a perfect knowledge of the language, and a minute attention to the customs and religious prejudices of the sepoys, being qualifications for that line which cannot be dispensed with. Were those officers to make a part of the King's army, it would soon become a practice to exchange their commissions with ruined officers from England, who would be held in contempt by their inferior officers, and in abhorrence by their soldiers, and you need not be told how dangerous a disaffection in our native troops would be to our existence in this country. I think therefore that as you cannot make laws to bind the King's prerogative in the exchanges or promotions of his army, it would be much the safest determination to continue the native troops in the Company's service, and by doing so you would still leave to the Court of Directors the patronage of cadets, and of course give some popularity to the measure.

Indian troops should be left under the Company.

The ultimate line to be drawn, would give to the Court of Directors the appointment of writers of the Civil branches of the service, and of cadets for the native troops, and the power of prescribing certain general rules under the descriptions I have mentioned,

for the disposal of offices by the Governments in India, and of calling the Governors, &c, to an immediate account for every deviation from these rules, but they ought to be strictly prohibited from appointing or recommending any of their servants to succeed to offices in this country, as such appointments or recommendations are more frequently granted to intrigue and solicitation than to a due regard to real merit or good pretensions, and such interference at home must always tend in some degree to weaken the authority of the Government in India.

Company's patronage

The mode of choosing the Directors, the term of their continuance in office, and the manner in which they should render an account of their own conduct, and lay statements of the affairs of the Company before the Proprietors of the Stock, with a variety of other points of that nature, will be subjects of regulation upon the present occasion; but upon the supposition of the charter's being renewed, it appears to me highly requisite for the public good that the right of inspection and controul in the King's Ministers should be without any exception as to their commerce; and as extended to every branch of the Company's affairs, altercations between the controulling power and the Court of Directors must always be detrimental to the public interest, whether occasioned by improper encroachments on one side, or and obstinate or capricious resistance on the other, it seems particularly desirable that not only the extent, but also the manner in which the Ministers are to exercise the right of inspection and controul, should be prescribed so clearly as to prevent if possible all grounds for misapprehension or dispute.

Ministers' right to inspect and control should be extended to all departments.

22. CORNWALLIS ON RELATIONS BETWEEN GOVERNOR-GENERAL AND COUNCIL[1], 1790.

Governor-General's absence from Calcutta rendered necessary by war with Tipu

I am aware that some inconvenience may arise by my absence from the seat of Government, and that the existing laws do not describe the powers which ought in such a case to be delegated by the Supreme Board to the Governor-General. But notwithstanding these objections, I am so fully impressed with the belief that the public interest will be on this occasion best promoted by my undertaking the direction of the war (against Tipu Sultan) in person, that I have resolved, with the approbation of the Board, to proceed to Madras ...., and should the Board concur in opinion with me on the propriety and utility of this measure, I need hardly suggest, that it will become necessary to invest me with such powers as may be thought suitable to my station of Governor-General, and which may appear to be calculated to enable me to apply the whole force of the Company with energy for the prosecution of the war, or to avail myself with promptitude and effect of any favourable opportunity that may offer, for negotiating and obtaining an honourable and advantageous peace.

Governor-General should be invested with adequate powers for conduct of war.

Enjoying as I do the high satisfaction of living on terms of cordiality and friendship, both public and private, with my colleagues in office[2]; and well acquainted as I am with their earnest desire to support my endeavours for promoting the public prosperity, I could not entertain a doubt, even if I had not formerly on a similar occasion been flattered with

Relations between Governor-General and Council during his absence from Calcutta

1 Minute, November 6, 1790.

2 "The flattering marks of personal confidence and friendship which I have constantly experienced, both in my public and private capacity, from the members of the Board, have made the most lasting impression on my mind, and claim my warmest acknowledgement."—*Minute of Lord Cornwallis*, December 3, 1790.

the most liberal declarations of their confidence, that the measures for the internal Government of Bengal which I have hitherto pursued, and in the success of which my share of responsibility is great, will, during my absence, be uniformly supported and punctually executed....I have the most implicit reliance on their communicating with me upon all points of internal business, in the manner that will best tend to promote the public good, and to preserve my authority in this Government.

The Members of the Council may on the other hand be assured, that I shall correspond and communicate my sentiments to them, with as much punctuality and expedition as the nature of the Service in which I am going will allow, and that I shall not only give an accurate detail of any material transactions or occurrences that may happen, but also endeavour to render a satisfactory account of every part of my public conduct ; I shall likewise on all occasions receive their advice and suggestions with all the attention and deference which is due to private friends, and to the acting Members of the Supreme Government.

23. INDEPENDENT POWERS OF GOVERNORS[1], 1793.

Why Governors should be allowed to overrule their Councils

10. And whereas it will tend greatly to the strength the security of the British possessions in India, and give energy, vigour and despatch to the measures and proceedings of the executive Government within the respective presidencies, if the Governor-General of Fort William in Bengal, and the several Governors of Fort Saint George and Bombay, were vested with discretionary power of acting without the concurrence of their respective

1 33 Geo. 3, c. 32.

Councils, or forbearing to act according to their opinions in cases of high importance, thereby subjecting themselves personally to answer to their country for so acting; be it enacted, that when any measure shall be proposed whereby the interests of the Company, or the safety or tranquillity of the British possessions in India, may in the judgment of the Governor-General, or the said Governors respectively, be essentially concerned or affected, and the said Governor-General or such Governors respectively shall be of opinion that it will be expedient either that the measure ought to be adopted or that the same ought to be suspended or wholly rejected, and the other members of such Council shall dissent from such opinion, the Governor-General or such Governor, and the other members of the Council, shall forthwith mutually communicate in Council to each other, in writing, the reasons of their respective opinions and if, after considering the same, the Governor-General or Governor and the other members of the Council shall retain their opinions, it shall be lawful for the Governor-General in the Supreme Council of Fort William, or either of the said Governors in their respective Councils, to make any order for suspending or rejecting the measure in part or in the whole, or for adopting the measure; which order shall be signed as well by the Governor-General, or Governor, as by all the other members of the Council then present, and shall by virtue of this Act be as effectual as if all the other members had concurred............

When Governors may overrule their Councils

System of Minute-writing

24. CHARTER ACT,[1] 1793.

[Towards the close of the Governor-Generalship of Lord Cornwallis it became necessary to take steps for renewal of the Company's charter. Henry Dundas, Pitt's most trusted friend and President of the Board of Control, decided that

1 33 Geo. 3 c. 52.

the Company should be allowed to retain its political privileges and duties. He was "strengthened in his own opinions on finding that Cornwallis was convinced of the expediency of continuing the Company, both as a political and commercial body, and of allowing the Directors to retain the patronage and much of their existing power." After consultations with Francis Baring, Chairman of the Company, Dundas began the formal nogotiations with the India House in January, 1793. On April 23, 1793, he introduced the Charter Bill into the House of Commons. In his speech he declared that he had appealed for advice to Hastings, Barwell, Francis and Impey; he added, "......had I found that so many able men........ had agreed in opinion on a system of Indian Government under the Crown, it would have been an inducement to build a system upon them; but from their differences of opinion I can only draw this conclusion, that it is safer to rest on the present system." The Bill passed, as Pitt remarked, "with a quietness unexampled in the annals of Parliament." Even the newspapers practically ignored the discussions on the Charter.[1]]

An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with their exclusive trade, under certain limitations; for establishing further regulations for the government of the said territories, and the better administration of justice within the same; for appropriating to certain uses the revenues and profits of the said Company; and for making provision for the good order and government of the towns of Calcutta, Madras and Bombay.

* * *

2 And be it further enacted........that it shall and may be lawful for His Majesty, his heirs or successors, by any letters patent, or by any commission or commissions to be issued under the great seal of Great Britain, from time to time, to nominate, constitute and appoint, during his or their pleasure, such members of the privy council (of whom the two principal Secretaries of State, and the Chancellor of

King may appoint Commissioners for Indian affairs.

1 See Philips, *The East India Company* pp. 71-78.

the Exchequer for the time being, shall always be three), and such other two persons as His Majesty, his heirs or successors, shall think fit to be, and who shall accordingly be and be styled Commissioners for the Affairs of India.

Three Commissioners may form a Board.

3. And be it further enacted, that any three or more of the said Commissioners shall and may form a board, for executing the several powers which by this act, or by any other act or acts, are or shall be given to or vested in the said commissioners; and that the first-named commissioner in any such letters patent or commission for the time being shall be the president of the said board; and that when any board shall be formed in the absence of the president, the commissioner whose name shall stand next in the order of their nomination in the said commission, of those who shall be present, shall for that turn preside at the said board........

Court of Directors to deliver to the Board copies of all proceedings and of dispatches received relating to the civil or military government or revenues

11. And be it further enacted, that the Court of Directors of the said Company for the time being shall, and they are hereby required, from time to time, to deliver to the said board copies of all minutes, orders, resolutions and proceedings of all courts of proprietors, general or special, and of all Courts of Driectors, within eight days after the holding of such courts respectively, and also copies of all letters, advices and dispatches which shall at any time or times be received by the said Court of Directors, or any committee of directors, from the East Indies, or from any other of their settlements or factories within the limits of their exclusive trade, or from any of the servants of the said United Company, stationed at Saint Helena, Bussara, Suez, Aleppo, or other parts beyond the seas, in anywise

relating to or concerning the civil or military government, or the revenues of the said territories and acquisitions in India, immediately after the arrival and receipt thereof.

16. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend, to give to the said board of commissioners any power or authority to issue or send any orders or instructions which do not relate to points connected with the civil or military government, or revenues of the British territories or possessions in India, nor to expunge, vary, or alter any dispatches proposed by the said Court of Directors as aforesaid, which do not relate to the said government or revenues ; and that if the said board shall send any orders or instructions to the said Court of Directors, to be by them transmitted, which in the opinion of the said Court of Directors shall relate to points not connected with the said civil or military government, or revenues, then and on any such occasion it shall be lawful for the said Court of Directors to apply by petition to His Majesty in Council touching the same, and His Majesty in Council shall decide how far the same be or be not connected with the civil or military government and revenues of the said territories and possessions in India, which decision shall be final and conclusive.

Board to issue orders relating to the civil or military government, or the revenues only, and if Directors think they do not relate to them, they may petition the King.

19. Provided also, and be it further enacted, that if the said Board of Commissioners shall be of opinion that the subject-matter of any of their deliberations concerning the levying war, or making peace or treating or negotiating with any of the native princes, or states in India, intended to be communicated in order to any of the Governments or

Board may send orders to the Secret Committee of Directors who shall transmit the same to India.

Presidencies in India, shall be of a nature to require secrecy, it shall and may be lawful for the said Board to send their orders and instructions to the Secret Committee of the said Court of Directors to be appointed as is by this act directed, who shall thereupon, without disclosing the same, transmit their orders and dispatches, according to the tenor of the said orders and instructions of the said Board, to the respective Governments and Presidencies in India; and that the said Governments and Presidencies shall be bound to pay a faithful obedience thereto, in like manner as if such orders and instructions have been sent to them by the said Court of Directors.

Directors to appoint a Secret Committee

20. And be it further enacted, that the said Court of Directors shall, from time to time, appoint a Secret Committee, to consist of any number, not exceeding three, of the said Directors, for the particular purposes in this act specified:

Presidencies in India may send dispatches to the Secret Committee who shall deliver them to the Board

22. Provided also, and be it further enacted, that when any of the Governments or Presidencies in India shall be of opinion that any of their dispatches to Great Britain, concerning the Government of the said territories and acquis tions, or the levying war, or making peace or negotiations, or treaties with any of the native princes or states of India, shall be of a nature to require the same to be kept secret, it shall be lawful for the said Governments or Presidencies respectively to address their dispatches requiring such secrecy, under cover sealed with their seals, unto the said Secret Committee of Directors of the said Company, for the inspection of such Committee and that immediately upon the arrival of such dispatches so addressed, the said Secret Commit-

tee of Directors shall deliver the same or copies thereof to the said Board.

* * * * *

Government of the Presidencies vested in the Governors and three Counsellors respectively

24. And be it further enacted, that the whole Civil and Military Government of the Presidency of Fort William in Bengal, and also the ordering, management, and Government of all the territorial acquisitions and revenues in the Kingdoms or Provinces of Bengal, Behar and Orissa, shall be and are hereby vested in a Governor-General and three Counsellors of and for the said Presidency, subject to such rules, regulations, and restrictions, as are made, provided, or established in that behalf in this act, or in any other act or acts now in force, and not by this act repealed or altered ; and that the whole civil and military government of the Presidency of Fort Saint George, on the coast of Coromandel, and the ordering, management, and government of all the territorial acquisitions and revenues on the said coast, and also so much and such parts of the territories and possessions on the coast of Orissa, with the revenues of the same, as have been and now are under the administration of the Government or Presidency of Fort Saint George, shall be and are hereby vested in a Governor and three Counsellors of and for the said Presidency of Fort Saint George, subject to such rules, regulations and restrictions as aforesaid ; and that the whole civil and military government of the Presidency and island of Bombay on the coast of Malabar, and the ordering, management and government of all territorial acquisitions and revenues on the said coast of Malabar, shall be and are hereby vested in a Governor and three Counsellors of and for the said Presidency and island of Bombay, subject as aforesaid, and the said Governors and Councils of the said Presidencies of Fort Saint

George, and Bombay respectively, being also subject to the superintendence and control of the said Governor-General in Council, in manner by this act provided or directed in that behalf, any act or acts to the contrary notwithstanding.

Vacancies of Governors, &c. to be filled up by the Directors

25. And be it further enacted, that all vacancies happening in the office of Governor-General of Fort William in Bengal, or of any of the members of the Council there, or of Governors of either of the Company's Presidencies or settlements of Fort Saint George or Bombay, or of any of the members of the Council of the same respectively, or of Governor of the forts and garrisons of Fort William, Fort Saint George, or Bombay, or of Cammander-in-Chief of all the forces in India, or of any provincial Commander-in-Chief of the forces there, all and every of such vacancies shall be filled up and supplied by the Court of Directors of the said United Company, the vacancies of any of the said members of Council being always supplied from amongst the list of senior merchants of the said Company, who shall have been respectively twelve years in India in their service, and not otherwise, except as is hereinafter otherwise provided.

How vacancies are to be supplied when no successors are on the spot

29. And be it further enacted, that if any vacancy shall happen in the office of Governor-General of Fort William, or of Governor of Fort Saint George or Bombay respectively, when no provisional or other successor, shall be upon the spot to supply such vacancy, then and in every such case, the Counsellor of the Presidency wherein such vacancy shall happen, next in rank to the said Governor-General, or Governor respectively, shall hold and execute the said office of Governor-General or Governor, until a successor shall arrive, or until some

other person on the spot shall be duly appointed thereto; and if the Council Board shall happen during the interval to become reduced to one only member, besides the acting Governor-General or Governor, then and in such case the person so acting as Governor-General or Governor shall be, and is hereby impowered to call to the Council Board such one of the senior merchants of the said Company, at such Presidency where the vacancy shall occur, as he shall think fit to be a temporary member of the said Board, and that the person so called shall accordingly sit and act as a member of the said Council, and shall have the same powers in all other respects as are given to persons appointed to the Council Board by the said Court of Directors, until the arrival of a successor or other appointment made to the office of Governor-General or Governor respectively and that every such acting Governor-General, Governor, and occasional Counsellor, shall, during the time of their continuing to act as such respectively, be entitled to receive the several emoluments and advantages appertaining to the said offices by them respectively supplied, such acting Governor-General and Governor foregoing their salary and allowances of Counsellor for the same period.

Member of Council next to Commander-in-Chief to succeed to the temporary Government of a Presidency unless the Commander-in-Chief shall have been provisionally appointed

30. Provided always, and be it further enacted, that if at the time of any vacancy happening in the office of Governor-General, or of a Governor of any of the said Presidencies, no eventual successor appointed under the authority of this act shall be present upon the spot, any Commander-in-Chief, although he shall be then a member of the Council of the Presidency where such vacancy shall occur, shall not succeed to the temporary government of such Presidency unless such Commander-in-Chief shall have been provisionally appointed to supply the same, but that

the vacancy shall be supplied by the Counsellor next in rank at the Council Board to such Commander-in-Chief, anything herein contained to the contrary notwithstanding.

Vacancy of Counsellors, when no successors are on the spot, to be supplied by the Governor-in-Council from the senior merchants

31. And be it further enacted, that if any vacancy shall happen of the office of a Counsellor at either of the said Presidencies, when no person provisionally or otherwise appointed to succeed thereto shall be then resident on the spot, then and on every such occasion such vacancy shall be supplied by and at the nomination or appointment of the Governor General in Council of Fort William, or the Governor in Council of Fort Saint George or Bombay respectively, from amongst the senior merchants in the said Company's service in India ; and that the person or persons so nominated shall execute the said office, and shall have the same powers in all respects as are given to persons appointed to the Council Board by the said Court of Directors, until a successor or successors shall arrive, duly appointed by the said Court of Directors, and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office or offices during his or their continuance therein respectively.

Commander-in-Chief, when not the Governor at the Presidency, may, by the authority of the Directors, be the second member of the Council.

32. And be it further enacted that when the office of Governor-General, and the office of Commander-in-Chief of all the forces in India, shall not be vested in the same person, such Commander-in-Chief shall and may, if specially authorised for that purpose by the said Court of Directors, and not otherwise, be a member of the Council of Fort William ; and that when the offices of Governor of Fort Saint George, and Commander-in-Chief of the forces there, shall be vested in different persons, or the offices of Governor of Bombay, and Commander-in-Chief of the forces in

Bombay, shall be vested in different persons, such respective Commander-in-Chief shall and may, if specially authorised by the Court of Directors, and not otherwise, be a member of Council at the said respective Presidencies; and that when any Commander-in-Chief shall be appointed a member of any of the said Councils such commander shall have rank and precedence at the Council Board next to the Governor-General or Governor of the same Presidency; but no Commander-in-Chief shall be entitled to any salary or emolument in respect of his being a member of any of the said Councils, unless the same shall be specially granted by the Court of Directors of the said Company.

Commander-in-Chief in India, not being Governor-General, while resident at Fort Saint George or Bombay, shall be a member of Council.

33. Provided always, and be it further enacted, that when the Commander-in-Chief of all the forces in India (not being likewise Governor-General) shall happen to be resident at either of the Presidencies of Fort Saint George or Bombay, the said Commander-in-Chief shall, from the time of his arrival, and during his continuance at such Presidency, be a member of the Council of such Presidency, and during that period the provincial Commander-in-Chief of the forces of the same Presidency, if he shall be a member of the Council thereof, shall and may continue to sit and deliberate, but shall not have any voice at the Council Board.

If any member shall be incapable of attending, the Governor of the Presidency may call to the Council a provisional successor.

34. And be it farther enacted, that if any of the members of the Council of either of the said Presidencies shall by any infirmity or otherwise be rendered incapable of acting, or of attending to act as such, or if any of such members shall be absent from the Presidency, and the Governor-General, or either of the said Governors, shall be desirous of having the advice of a full Council upon any urgent business, the Governor-General, or such Governors, respectively,

shall by virtue of this act have full power and authority to call any provisional successor appointed, then on the spot, or, their being none such on the spot, then any senior merchant on the spot, to assist at the Council Board for the turn; but that such provisional successor, or other person, shall not be entitled to any salary or other emolument in respect thereof, nor shall his acting as an occasional member of Council, in manner aforesaid, deprive him of any office or emolument he before enjoyed.

King may remove any servant of the Company in India.

35. And be it further enacted, that it shall and may be lawful to and for the King's Majesty, his heirs and successors, by any writing or instrument under his or their sign manual, countersigned by the President of the Board of Commissioners for the Affairs of India, to remove or recall any person or persons holding any office, employment, or commission, civil or military, under the said United Company in India for the time being, and to vacate and make void all or every, or any appointment or appointments, commission or commissions, of any person or persons to any such offices or employments: and that all and every the powers and authorities of the respective persons so removed, recalled, or whose appointment or commission shall be vacated, shall cease or determine at or from such respective time or times as in the said writing or writings shall be expressed and specified in that behalf: provided always, that a duplicate or copy of every such writing or instrument, under His Majesty's sign manual, attested by the said President for the time being, shall, within eight days after the same shall be signed by His Majesty, his heirs or successors, be transmitted or delivered to the Chairman or Deputy Chairman for the time being of the said Company, to the intent

that the Court of Directors of the said Company may be apprised thereof.

36. Provided always, and be it further enacted, that nothing in this act contained shall extend, or be construed to extend, to preclude or take away the power of the Court of Directors of the said Company from removing or recalling any of the officers or servants of the said Company, but that the said Court shall and may at all times have full liberty to remove, recall, or dismiss any of such officers or servants, at their will and pleasure, in the like manner as if this act had not been made, any Governor-General, Governor or Commander-in-Chief, appointed by His Majesty, his heirs or successors, through the default of appointment by the said Court of Directors, always excepted; anything herein contained to the contrary notwithstanding.

Directors not precluded from recalling their servants

37. And be it further enacted, that the departure from India of any Governor-General, Governor, Member of Council, or Commander-in-Chief, with intent to return to Europe, shall be deemed in law a resignation and avoidance of his office or employment, and that the arrival in any part of Europe of any such Governor-General, Governor, Member of Council, or Commander-in-Chief, shall be a sufficient indication of such intent; and that no act or declaration of any Governor-General or Governor, or Member of Council, during his continuance in the Presidency whereof he was so Governor-General, Governor, or Counsellor, except by some deed or instrument in writing, under hand and seal, delivered to the Secretary for the public department of the same Presidency, in order to its being recorded, shall be deemed or held as a resignation or surrender of his said office; and that the salary and other allowances of any such Governor-General, or other officers respectively, shall cease from

Departure from India of Governor-General with intent to return to Europe to be deemed a resignation of employment

While at the Presidency, no resignation of a Governor-General to be valid, except when delivered in writing to the Secretary

the day of such his departure, resignation, or surrender; and that if any such Governor-General, or any other officer whatever in the service of the said Company, shall quit or leave the Presidency or settlement to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning back to his station at such Presidency or settlement, or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his quitting such Presidency or settlement, any law or usage to the contrary notwithstanding.

Regulation respecting salaries

Proceedings to be expressed to be made by the Governor and Council, and signed by the Secretary

39. And be it further enacted, that all orders and other proceedings of the Governor-General and Council of Fort William shall be expressed to be made by the Governor-General in Council; and that all orders and other proceedings of the Governors and Councils of Fort Saint George and Bombay respectively shall be expressed to be made by the Governor in Council and not otherwise; and that the several orders and proceedings of all the said Presidencies shall, previous to their being published or put in execution, be signed by the Chief Secretary to the Council of the Presidency, by the authority of the Governor-General in Council, or Governor in Council, as the case may be.

Governor-General in Council empowered to superintend the other Presidencies

40. And be it further enacted, that the Governor-General in Council at Fort William shall have and be invested by virtue of this act with, full power and authority to superintend, controul and direct the several Governments and Presidencies of Fort Saint George and Bombay, and all other Governments erected or to be erected by the said United Company, within the limits of their said exclusive trade, in all

such points as shall relate to any negotiations or taansactions with the country powers or States, or levying war or making peace, or the collection or application of the revenues of the said acquisitions and territories in India, or to the forces employed at any of such Presidencies or Governments, or to the Civil or Military Government of the said Presidencies, acquisitions, or territories, or any of them.

Other Presidencies to obey the orders of the Governor-General in Council, if not repugnant to instructions from England

41. And in order to prevent the embarrassment and difficulty which may otherwise arise from any doubt whether orders or instructions of the Governor-General in Council of Fort William relate to other points than those aforesaid be it further enacted, that notwithstanding any doubt which may be entertained by the said Presidencies or Governments to whom such orders or instructions shall be given respecting the power of the Governor-General in Council to give such orders, yet the said Presidencies or Governments shall be bound to obey such orders and directions of the said Governor-General in Council, in all cases whatever, except only where they shall have received positive orders and instructions from the said Court of Directors, or from the Secert Committee of Directors, by the authority of the said Board of Commissioners for the affairs of India, repugnant to the orders and instructions of the said Governor-General in Council, and not known to the said Governor-General in Council, at the time of dispatching their orders and instructions as aforesaid; and the said Governor-General in Council shall, at the time of transmitting all such orders and instructions, transmit therewith the dates of, and the times of, receiving the last dispatches, orders, and instructions, which they have received from the Court of Directors, or from the said Secret Committee by the direction of the said Board of Commissioners, or any of the points

Governor-General to send dates, &c. of dispatches from England on points contained in instructions to Presidencies &c. who shall transmit to him copies of any orders they deem repugnant thereto

contained therein ; and the said Presidencies, Governments, and Settlements, in all cases where they have received any orders from the said Court of Directors, or from the said Secret Committee by the direction of the Board of Commissioners as aforesaid, which they shall deem repugnant to the orders of the said Governor-General in Council of Fort William, and which were not known to the said Governor-General and Council at the time of dispatching their orders and instructions as aforesaid, shall forthwith transmit copies of the same, together with an account of all instructions or orders made by them in consequence thereof, to the Governor-General in Council of Fort William, who shall, after the receipt of the same, dispatch such further orders and instructions to the said Presidencies, and Governments or Settlements, as the said Governor-General in Council may judge necessary thereupon.

War not to be declared by the Governor-General in Council without the command of the Directors, but preparations for hostilities may be made

42. And for as much as to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour, and policy of this nation : be it further enacted, that it shall not be lawful for the Governor-General in Council of Fort William aforesaid, without the express command and authority of the said Court of Directors, or of the said Secret Committee by the authority of the said Board of Commissioners for the Affairs of India, in any case (except where hostilities have actually been commenced, or preparations actually made for the commencement of hostilities, against the British nation in India, or against some of the princes or states dependent thereupon, or whose territories, the said United Company shall be at such time engaged by any subsisting treaty to defend or guarantee) either to declare war or commence hostilities, or enter into any treaty for making war against any of the country princes or States in India, or any

treaty for guaranteeing the possessions of any country princes or States : and that in any such case it shall not be lawful for the said Governor-General and Council to declare war or to commence hostilities, or to enter into any treaty for making war against any other prince or state, than such as shall be actually committing hostilities, or making perparations as aforesaid, or to make such treaty for guaranteeing the possessions of any prince or State, but upon the consideration of such prince or State actually engaging to assist the Company against such hostilities commenced, or preparations made as aforesaid ; and in all cases where hostilities shall be commenced, or treaty made, the said Governor-General and Council shall, by the most expeditious means they can devise, communicate the same unto the said Court of Directors, or the said Secret Committee, together with a full state of the information and intelligence upon which they shall have commenced such hostilities, or made such treaties, and their motives and reasons for the same at large.

Communication of commencement of hostilities to be made to the Directors

43. And be it further enacted, that it shall not be lawful for the Governors and Counsellors of Fort Saint George and Bombay, or of any other subordinate settlement, to make or issue any order for commencing hostilities or levying war, or to negotiate or conclude any treaty of peace, or other treaty, with any Indian Prince or State (except in cases of sudden emergency or imminent danger, when it shall appear dangerous to postpone such hostilities or treaty) unless in pursuance of express orders from the said Governor-General in Council of Fort William aforesaid, or from the said Court of Directors, or from the said Secret Committee by the authority of the said Board of Commissioners for the Affairs of India, and every such treaty shall, if possible, contain a clause

Governments of Fort Saint George or Bombay not to declare war but by orders from Fort William or the Directors

for subjecting the same to the ratification or rejection of the Governor-General in Council of Fort William aforesaid : and the said Governors and Counsellors, and other officers of the said Presidencies of Fort Saint George and Bombay, or other Settlements respectively, are hereby required to pay and yield obedience to all such orders as they shall, from time to time, respectively receive from the said Governor-General in Council of Fort William aforesaid, concerning the matters aforesaid ; and that all and singular the said Governors, Counsellors, the other officers who shall refuse or wilfully neglect or forbear to pay obedience to such orders and instructions as they shall receive from the said Governor-General in Council of Fort William as aforesaid, shall be liable to be removed, dismissed, or suspended from the exercise of their respective offices or powers by order of the said Governor-General in Council of Fort William, and be sent to England, and be subject to such further pains and penalties as are or shall be provided by law in that behalf.

Penalty on Governors of Fort St. George and Bombay for neglect of orders from Fort William

44. And be it further enacted, that the Governors and Counsellors of the said Presidencies of Fort Saint George and Bombay respectively for the time being, and the Governors and Counsellors, or other chief officer or officers of, and belonging to, any other British settlement in India, shall, and they are hereby respectively required constantly and diligently to transmit to the said Governor-General in Council at Fort William aforesaid, true and exact copies of all orders, resolutions, and acts in Council of their respective Governments, Presidencies, and Councils, and also advice and intelligence of all transactions and matters which shall come to their knowledge, material to be communicated to the Governor-General in Council of Fort William aforesaid, or which

Presidencies of Fort St. George &c. to send to Fort William copies of all their orders

the said Governor-General in Council shall, from time to time, require.

45. And whereas it will tend greatly to the strength and security of the British possessions in India, and give energy, vigour, and dispatch to the measures and proceedings of the executive government within the respective Presidencies if the Governor-General of Fort William in Bengal, and the several Governors of Fort Saint George and Bombay, were vested with a discretionary power of action without the concurrence of their respective Councils, or forbearing to act according to their opinions, in cases of high importance, and essentially affecting the public interest and welfare, thereby subjecting themselves personally to answer to their country for so acting, or forebearing to act; be it enacted, that when and so often as any measure or question shall be proposed or agitated in the Supreme Council at Fort William in Bengal, or in either of the Councils of Fort Saint George and Bombay, whereby the interests of the said United Company, or the safety or tranquillity of the British possessions in India, or any part thereof, are, or may, in the judgment of the Governor-General, or of the said Governors respectively, be essentially concerned or affected, and the said Governor-General or such Governors respectively shall be of opinion that it will be expedient either that the measures so proposed or agitated ought to be adopted or carried into execution, or that the same ought to be suspended or wholly rejected, and the several other Members of such Council then present shall differ in and dissent from such opinion, the said Governor-General or such Governor, and the other Members of the Council shall, and they are hereby directed forthwith mutually to exchange with and communicate in Council to each other, in writing,

Governor-General, or Governors, may order measures proposed in Council about which they differ from the other members, to be adopted or suspended.

under their respective hands (to be recorded at large on their secret consultations) the respective grounds and reasons of their respective opinions ; and if, after considering the same, the said Governor-General, or such Governor respectively, and the other Members of the said Council, shall severally retain their opinions, it shall and may be lawful to and for the said Governor-General in the Supreme Council of Fort William, or either of the said Governors in their respective Councils, to make and declare any order (to be signed and subscribed by the said Governor-General, or by the Governor making the same) for suspending or rejecting the measure or question so proposed or agitated in part or in the whole, or to make and declare such order and resolution for adopting and carrying the measure so proposed or agitated into execution, as the said Governor-General, or such Governors in their respective Councils, shall think fit and expedient ; which said last mentioned order and resolution, so made and declared, shall be signed as well by the said Governor-General, or the Governor so making and declaring the same, as by all the other Members of the Council then present, and shall . y force and virtue of this act be as effectual and lid, to all intents and purposes, as if all the said other Members had advised the same, or concurred therein; and the said Members of Council, and all officers, Civil and Military, and all other persons concerned, shall be, and they are hereby commanded, authorised and enjoined to be, obedient thereto, and to be aiding and assisting in their respective stations in the carrying the same into execution.

47. And be it further enacted, that the Governor-General, or Governor, who shall declare and command any such order or resolution to be made

and recorded without the assent or concurrence of any of the other Members of Council, shall alone be held responsible for the same, and the consequences thereof.

* * * *

49. Provided always, and be it further enacted, that nothing in this contained shall extend, or be construed to extend, to give power to the said Governor-General of Fort William in Bengal, or to either of the said Governors of Fort Saint George and Bombay respectively, to make or carry into execution any order or resolution which could not have been lawfully made and executed with the concurrence of the Councils of the respective Governments or Presidencies, any thing herein contained to the contrary notwithstanding.

Governor-General &c, making any order without the consent of the Council, to be responsible for the same, but not to make any order which could not have been made with the consent of the Council

50. Provided also, and be it further enacted and declared, that nothing in this act contained shall extend, or be construed to extend, to give any discretionary power of acting, or forbearing to act, without the concurrence of the other Members of Council, unto any person on whom the said office of Governor-General, or the said office of Governor respectively, shall happen to devolve by the death or resignation of any Governor-General, or Governor for the time being respectively, or unto any Deputy Governor-General, unless such person shall have been provisionally appointed to succeed to such respective office by the said Court of Directors, or unless and until such person shall have been or shall be confirmed in the said office, and that in the meantime all orders, resolutions, and other acts and things in such Presidency, shall be determined by the voice of the major part in number of the Governor-General and Counsellors, or Governor and Counsellors present at the making or doing thereof, such Governor-General or

No person on whom the office of Governor-General or Governor shall devolve by death, to exercise discretion—any power without the concurrence of the Council, unless provisionally appointed

Governor having on any equality of voices a casting vote, and not otherwise, or in any other manner, any thing in this act contained to the contrary notwithstanding.

Governor-General to nominate a Vice-President of Fort William to act during his absence

53. And be it further enacted, that when and so often as the said Governor-General shall on any occasion be absent from his own Government of Bengal, such one of the Members as the said Governor-General shall nominate for the purpose, shall be styled and act as Vice-President and Deputy-Governor of Fort William, and that the Government of the said Presidency shall be exercised by such Vice-President or Deputy, and the other Member or Members of the said Council, in like manner, and no further or otherwise than as the Government of the said Presidencies of Fort Saint George and Bombay may be exercised by Govornors in Council there, subject nevertheless to the restrictions in this act contained.

But while absent, Governor-General may issue orders to the officers and servants of the other Presidencies

54. And be it further enacted, that if the said Governor-General, during his absence from his own Government of Bengal, shall judge it necessary to issue any orders or directions to any of the said Governments or Presidencies in India, or to any of the officers or servants of the said Company acting under the authority of any of the said Presidencies, without previously communicating such orders or instructions to the said respective Governments, under the authority of which such officers or servants shall be acting, it shall and may be lawful for him to issue the same, and that the said respective Governments or Presidencies, and also such officers and servants shall, and they are hereby severally and respectively authorised and required to, obey the same, and such orders and instructions shall be of the same force as if the same had been made by the

said Governor-General in Council at Fort William, but not of any greater or other force or validity ; and that if such orders or directions shall be made by the said Governor-General of his own sole authority, or without the concurrence of the other Members of Council of either of the said Presidencies of Fort Saint George and Bombay respectively, in that case the said Governor-General shall be alone held responsible for the same, in the like manner as for any orders or resolutions by him made in Council at Fort William, of his own sole authority, without the concurrence of the other Members of the same Council, according to the directions and true intent and meaning of this act : Provided always, that such Governor-General shall and he is hereby required to, transmit by the first opportunity, to the Governors and Councils of the respective Presidencies to which the officers or servants to whom any such orders or instructions shall be so sent to be executed shall belong, copies of such orders or instructions respectively, with his reasons or inducements for issuing the same, and also to transmit to the Court of Directors of the said Company, by the first opportunity that shall or may occur, a copy of all orders and instructions by him so sent to any of the said Governments, Presidencies, officers, or servants respectively, together with his reasons and inducements for sending or issuing the same.

Directors, with the approbation of the Board, may suspend the powers of the Governor-General to act upon his own authority

55. Provided also, and be it further enacted, that it shall and may be lawful for the Court of Directors of the said Company, with the approbation of the Board of Commissioners for the Affairs of India, to suspend all or any of the powers hereby given to the Governor-General of Fort William to act upon his own sole authority, at and for such time or times as they may judge expedient or necessary,

and that the same shall be suspended accordingly, from the time of the arrival of their orders for that purpose in India: and also for the said Court of Directors with such approbation as aforesaid, to receive the said powers, when and as they shall think fit: any thing herein contained to the contrary notwithstanding.

Receiving gifts to be deemed a misdemea-

62. And be it further enacted, that the demanding or receiving any sum of money, or other valuable thing, as a gift or present, or under colour thereof, whether it be for the use of the person receiving the same, or for, or pretended to be for the use of the said Company, or of any other person whatsoever, by any British subject, holding or exercising any office or employment under His Majesty, or the said United Company, in the East Indies, shall be deemed and taken to be extortion and misdemeanor at law, and shall be proceeded against and punished as such, under and by virtue of this act, and the offender shall also forfeit to the King's Majesty, his heirs and successors, the whole gift or present so received, or the full value thereof.

Neglect to execute the orders of the Directors to be deemed a misdemeanor

65. And be it further enacted, that the wilful disobeying, or the wilfully omitting, forbearing, or neglecting to execute the orders or instructions of the Court of Directors of the said Company, by any Governor-General, Governor, President, Counsellor, or Commander-in-Chief, or by any other of the officers or servants of the said United Company in the East Indies (unless in cases of necessity, the burthen of the proof, of which necessity shall lie on the party so disobeying, or omitting or forbearing to execute such orders and instructions as aforesaid), and every wilful breach of the trust and duty of any

office or employment, by any such Governor-General, Governor, President, Counsellor or Commander-in-Chief, or by any of the officers or servants of the said United Company in the East Indies shall be deemed and taken to be a misdemeanor at law, and shall or may be proceeded against and punished as such by virtue of this act.

67. And be it further enacted, that all His Majesty's subjects, as well servants of the said United Company as others, shall be and are hereby declared to be amenable to all Courts of Justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences, and crimes whatever, by them or any of them, done or to be done or committed in any of the lands or territorries of any native prince or State, or against their persons or properties, or the persons, or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government of India.

King's subjects amenable to courts of justice in India and Great Britain for offences in the territories of 'native' princes

137. And be it further enacted, that it shall not be lawful for any Governor-General, or Governor, or any Member of Council of the said Presidencies in India, to be concerned in any trade or traffic whatever, except on account of the said Company, nor for any Collector, Supervisor, or other person employed or concerned in the collection of the revenues, or the administration of Justice, in the provinces of Bengal, Behar and Orissa, or either of them, or their agents or servants, or any person or persons in trust for them or any of them, to carry on or be concerned in or to have any dealings or transactions, by way of

No Governor-General to trade, except on account of Company

traffic or trade, at any place within any of the Provinces in India, or other parts, or to buy any goods, and sell the same again, or any part thereof, at the place where he or they bought the same, or at any other place within the same province, or any other such province or country respectively, except on account of the said Company; nor shall it be lawful for any of the judges of the Supreme Court of Judicature to be concerned in any trade or traffic whatever; nor shall it be lawful for any of His Majesty's subjects in the said provinces to engage, intermeddle, or be in anywise concerned, directly or indirectly, in the inland trade in salt, beetlenut, tobacco, or rice, except on the account of the said Company, or with their permission, on pain of forfeiting all such goods or commodities which they, or any of them, shall so buy and sell again, by way of traffic, or in which any of them shall so trade, and also treble the value thereof, one moiety to the said United Company, and the other moiety to him or them who will sue for the same.

No Judge to be concerned in any trade

No person whatever to be concerned in inland trade in salt, etc. except with the Company's permission

25. WELLESLEY ON INDIAN ADMINISTRATION[1], 1800.

The great pressure of the numerous and important duties now performed immediately by the Governor-General in Council, has induced us to take a review of the constitution of the Governor-General, considered as the supreme authority in India.

Governor-General in Council to be relieved of some duties

It has been his Lordship's object in this review to determine what duties now executed immediately by the Governor-General in Council ought still to be performed by him; what duties ought to be delegated to other establishments, and lastly to make a perma-

1 Governor-General in Council to Court of Directors, July 9, 1800.

nent provision for the due discharge of those duties which the Governor-General in Council must necessarily retain, as well as of those which it has been deemed advisable he should relinquish.

In the discussion of these important questions we have not hesitated to consider the extensive and valuable possessions to the government of which the Company have succeeded, as a great Empire. To view those possessions in any other light, must, we are persuaded, always lead to the most erroneous conclusions as to the principles of policy by which they ought to be governed.

The early administration of the Company succeeded to the despotic power of the native princes.

Those princes, as in other despotic governments, united in their own persons the whole legislative, executive, and judicial powers of the State, and exercised them according to the dictates of their own discretion.

No form of Government could be so ill adapted to these countries when they became dependent possessions of the British Empire, subject to be governed by persons occasionally deputed from the Mother Country.

Government of Bengal modelled on principles of British constitution

Experience of the evils attendants on this form of Government conducted by a delegated British administration, led to the modelling of the Government of Bengal, on principles drawn from the British constitution.

A distribution of the legislative, executive, and judicial powers of the state, analogous to that which forms the basis of the British Constitution, was made the foundation of the new constitution of the Government of Bengal.

Considerations, however, arising out of the nature

of our situation in this country demanded that these fundamental principles of the British Constitution should be introduced with a variety of modifications.

Legislation

The lines between these three authorities were distinctly drawn, but it was obviously necessary that the Governor-General in Council should exercise exclusively the entire legislative authority.

But at the same time that we excluded our native subjects from all participation in the legislative authority, abundant security was afforded to them, that the exercise of that authority would always be directed to their happiness and benefit.

(i) Governor-General in Council

The confirmation of their ancient laws in all matters connected with their religious prejudices, or their domestic relations, formed one of the first acts of the Governor-General in Council under the new constitution.

Courts

Provision was also made for ascertaining the sense which the people might entertain of the laws and regulations enacted for the government of the country, by the authority given to the judges of all the Courts of judicature to propose such general or local laws as, from their intercourse with the natives in the administration of justice, might appear to them necessary to promote the public happiness and prosperity.

As an effectual security against every abuse of the legislative power vested in the Governor-General in Council, it was made a fundamental principle of the new constitution, that he shall print and publish every legislative Act in a from which renders him responsible to his country for the unjust or unwise exercise of that power.

Executive.

The executive authority was of necessity also exclusively vested in the Governor-General in Council.

No check can be imposed on the Governor-General in Council in the exercise of this authority in the regulation of our connection with the foreign States of India. But as our own interest, and that of our subjects with regard to those connections are necessarily the same, they have the best security that the most effectual means will always be taken to protect the country from foreign enemies.

(i) Foreign policy

With regard to all acts of the executive power as they relate to the internal government of the country, the people possess the same security against any infringement by this power of the rights and principles which have been granted to them by the laws, as is enjoyed under the British Constitution.

(ii) Internal government

It was judged advisable, however, to restrict the controul over the executive authority to cases actually provided for by the regulations. But as legislative provisions are made for all cases not included in the existing laws as such cases arise, the discretionary power which the Governor-General in Council may now exercise in cases of that nature, must in progress of time entirely cease.

As constituting the Courts of Sudder Dewanny Adawlut and the Nizamut, or the chief civil or criminal Courts, the Governor-General in Council also exercises a large portion of the judicial power.

Judicial

The reasons which originally occasioned the continuance of the entire legislative and executive authority in the Governor-General in Council, are obviously of a permanent nature.

There is no change in our situation in this country, which can be supposed, in which it would be expedient to admit any part of our native subjects to participate in the legislative authority with the Governor-General in Council.

Indians cannot be allowed to share legislative and executive authority of Governor-General in Council.

The same principle applies to the executive authority of the Governor-General in Council, as far

as regards the relations of the British possessions with foreign states. It can never be expedient that our native subjects should be allowed to interfere in those relations, or that any local restrictions should be imposed on the Governor-General in Council, in the conduct of them.

With regard to the executive authority of the Governor-General in Council, as far as relates to the internal government of the country, this authority can only be vested in him. But the nature of our situation affords additional reasons for subjecting the executive authority in this branch gradually to the complete controul of the law, in the same manner as that authority is restricted by the laws of the British constitution.

While our political security demands that the entire legislative and executive authority should continue to be vested exclusively in the Governor-General in Council agreeably to the principles of the existing constitution : it is at the same time a satisfaction to know, that under the checks which are imposed on the Governor-General in Council in the exercise of these powers the union of them in his hands, (notwithstanding the objections to which this union may be liable in theory) is perfectly compatible which the ends of good government.

Judicial duties of Governor-General in Council may be delegated.

There are no circumstances however connected with our political situation in this country, which require that the Governor-General in Council should continue to exercise any portion of the judicial authority.

It is equally necessary to the happiness of the people to the prosperity of the country, and to the stability of the British Government, that such laws as the Governor-General in Council may sanction in

his legislative capacity, should be administered with ability, integrity, impartiality and expedition.

All the provisions made by the British constitution for precluding the legislative and the executive powers of the state, from any interference in the administration of the laws, are not only applicable to the government of this country, but, if it were possible, demand to be strengthened.

Necessity of precluding legislative and executive authorities from interfering with administration of laws

An efficient controul may be exercised from England over the conduct of the Governor-General in Council, in his legislative capacity. But no effectual controul can be exercised over him in the administration of the laws, and he may render the laws altogether nugatory by abuses, omissions, or delays in their administration.

It is essentially necessary that the security of private rights and property should be rendered altogether independent of the characters of those who may be occasionally placed at the head of your affairs in this country. This, however, can never be the case, while the Governor-General in Council who makes the law, and whose acts in his executive capacity, as well as those of the long trai n of officers who exercise authority under him in that capacity also, constitute the chief courts which controul the general administration of justice.

No inconvenience can arise from divesting the Governor-General in Council of all immediate interference in the administration of the laws, while he has the power of altering at his pleasure the law itself.

These objections to the exercise of any judicial power by the Governor-General in Council, are founded on general and established principles of government; but other considerations render this duty incompatible with the proper functions of the Governor-General in Council.

Why Governor-General in Council should be relieved of judicial duties

The administration of justice in open court, is one of the principal securities for its due administration.

The constant appearance of the Governor-General in Council in an open court of justice would be incompatible with that dignity which, to render him competent to the conduct of the government, it is essentially necessary that the person invested with the supreme executive and legislative power should maintain, not only in the estimation of the people immediately subject to his government, but also of the foreign powers.

The presence of the Governor-General in Council in open court, would prevent the pleading of causes with becoming freedom. No native pleader would venture to contest his opinions, and the will of the Governor-General, and not the law would be considered as the rule of decision.

As the Governor-General must necessarily be often unacquainted with the languages of the country, this circumstance alone would render it impracticable for him to preside at trials in open court, unless it should be determined that the trials should be conducted in English, and by English pleaders.

In consequence of these circumstances, the Courts of Sudder Dewanny Adawlut, and Nizamut Adawlut are held in the council chamber. Neither the parties nor their pleaders are in any cases present. The proceedings are translated into English, and read to the members of the Court who pass their decision, which the register records.

The necessity of making these translations constitutes the chief cause of the delay in the decision of the causes which are brought before the chief civil and criminal courts. The translations cannot however be dispensed with for the reasons above stated. They are also requisite for record and trans-

mission to England, as they now constitute the only check on the Governor-General in Council in the administration of the law ; but for these considerations, no translations of the proceedings on trials would be necessary.

But there is another object, unconnected with any of the above considerations, which is of itself sufficient to establish the necessity of divesting the Governor-General in Council of the judicial authority now exercised by him.

A conscientious discharge of the duties of the Sudder Dewanny Adawlut, and the Nizamut Adawlut, would of itself occupy the whole time of the Governor-General in Council.

Various duties of *Sadar Dewani* and *Nizamat Adalats*

The proper duties of these courts are not confined to the determination of the causes which are brought before them. It is also their duty to superintend the conduct of all the other courts, to watch over the general police of the country, and to frame for the consideration of the Governor-General in Council, new laws as cases may arise demanding further legislative provisions.

When your Honourable Court shall advert to the extent of your dominions, to their population, to their growing prosperity, and to the consequent multiplied concerns of individuals, it will at once be evident that it is physically impossible that the Governor-General in Council can ever dedicate that time and attention to the duties of these courts, which must necessarily be requisite for their due discharge.

It is impossible to have the benefit of a regular and systematic government without numerous laws, and for the due administration of those laws, the necessary establishments must be provided.

Of the value of a system of government founded on these principles as connected with your permanent

interests, a competent judgment may be formed by a comparison of the present state of your territories in Bengal, with that of your ancient possessions on the coast of Coromandel, as described in the able report of the Board of Revenue at Fort St. George, forwarded to your Honourable Court by this despatch.

Separate judges to be appointed for *Sadar Dewani* and *Sadar Nizamat Adaalt*

These considerations have induced us to determine, under the sanction of the clause of the act of the year of the reign of his present Majesty, that the Governor-General, and the members of Council shall not constitute the Court of Sudder Dewanny Adawlut in future but that distinct judges shall be appointed to preside by the Governor-General and the members of Council, as the judges of that court.

We have also determined, that the same judges shall constitute the Court of Nizamut Adawlut, with all the powers now exercised by the Governor-General and the members of Council, as judges of the court.

Merits of the new system

The adoption of this arrangement will establish the prosperity of your dominions in Bengal, on the most solid foundation. Your Honourable Court will yourselves be able to exercise the most effectual controul over the Governor-General in Council in his legislative capacity, as his acts printed and published come under your revision. His executive authority as far as regards the internal government, will be subject to the controul of the laws, and the due administration of the laws, will be secured by the courts appointed to administer them being rendered entirely distinct, both from the executive and legislative authority, at the same time that the conduct of the judges of the superior courts, will be subject to the most vigilant controul on the part of the executive power.

The necessity of divesting the Governor-General in Council of the exercise of any judicial authority at some future period was foreseen at the first establishment of the present constitution. It will accordingly appear, that throughout the code of regulations the powers of the Sudder Dewanny Adawlut and the Nizamat Adawlut are so framed, as to admit of these courts being at any time constituted in the manner now proposed. But the cautious spirit which will be found to pervade every part of that constitution, wisely left these judicial powers to be exercised by the Governor-General in Council, until circumstances should dictate the necessity of his relinquishing them.

The establishment of the new Courts of Sudder Dewanny Adawlut and Nizamut Adawlut, providing for the discharge of the judicial duties now exercised by the Governor-General in Council, the only point connected with the subject of this address which remains to be considered, is the permanent provision to be made for enabling the Governor-General in Council to execute the legislative and executive duties which are still to be performed by him.

Legislative duties of Governor-General in Council

The duties of the Governor-General in Council in his legislative capacity, are first, the framing of such laws or regulations as may occur to him to be necessary for improving the internal government of the country. Secondly, the consideration of such laws or regulations as may be proposed to him by any of the Courts of Judicature, or other authorities empowered to propose regulations.

In a despotic government the will of the ruling power stands in the place of law; but when it becomes the fundamental principle of a government, to be guided by written and defined laws, every case

which occurs, for which no provision is made, and every defect discovered in the existing laws, calls for the interposition of the legislative authority.

Numerous cases now demand that interposition; but it is unavoidably withheld, from the various avocations of the Governor-General in Council, rendering it impossible to give his attention to the several cases, or defects, or to make the necessary legislative provisions for them.

The superintendence of this important duty, on the due performance of which depend the happiness of the people, the extent of your resources, and the stability of your empire, will in future devolve chiefly on the new Court of Sudder Dewanny Adawlut and Nizamat. It will be the province of the Governor-General in Council to determine on the expediency of adopting the regulations which may be submitted to him by these courts, or by the other authorities empowered to propose regulations.

Executive duties of Governor-General in Council

The duties of the Governor-General in Council in his executive capacity consist of—first, his duties as exercising the executive authority of the government of the British possessions in India. Secondly, his duties as the chief representative of the Company in India, in their commercial capacity.

The first mentioned duties must be considered, as they relate to the conduct of the relations between the British power in India, and Foreign States; and secondly, as they are connected with the internal government of your own possessions.

The glorious termination of the late war in Mysore, and the events which preceded it, have not only widely extended your political relations, but have established the ascendancy of the British power over all the States in India.

The maintenance of this ascendancy, necessarily demands the constant and vigilant attention of the Governor-General in Council.

The public records afford abundant testimony, how great a proportion of the time of the Governor-General in Council must necessarily be occupied by this most important duty.

The executive duties of the Governor-General in Council as connected with the internal government of the British possessions of Bengal, comprise the management of the public revenue, the superintendence of the general finances of India, the regulation of the army, and the infinite variety of miscellaneous business which falls under the cognizance of the executive authority in every government.

Control of Governor-General in Council over Madras and Bombay

The general controul exercised by the Governor-General in Council over the civil and military affairs of the subordinate governments, forms another important branch of these executive duties.

The two subordinate governments may be considered with relation to the supreme government as dependent states. The nature of the controul exercised over those governments, corresponds in many material respects, with that exercised by the Crown, with regard to the American and West Indian possessions.

It is essential that this controul should be extended to all matters in any respect connected with the unity, strength and stability of the British power in India.[1]

The various questions arising out of the settlement of our recent conquests, of our connection with

1 One of the grounds on which Lord Wellesley was censured by the Court of Directors was excessive interference in the affairs of the subordinate Presidencies. Before his

the dependent power established in Mysore, and lastly, the introduction of the constitution of the internal government of Bengal, into the British territories, subject to the governments of Fort St. George and Bombay, demand at present a more than ordinary attention of the Governor-General in Council, to the affairs of those governments.

Another branch of the duties of the Governor-General in Council in his executive capacity, is the superintendence of the subordinate settlements, and of our acquisitions from the French and the Dutch.

Court of Directors on Wellesley's excessive interference with subordinate Presidencies

time, observed the Court, it was "not the practice of the Supreme Government to interfere, unless upon reference from the subordinate Presidencies, in the minute details of their affairs, much less to abridge them of any of the authority political or military with which the law had invested them." The Court concluded: "It appears to have been the intention of Marquis Wellesley to concentrate all the political powers of British India in the person of the Governor-General and to consider the whole but as forming, in respect to him, one government through every part and ramification of which his authority was practically and constantly to pervade." Quoting instances of the Governor-General's interference in the affairs of the subordinate Presidencies the Court summed up by saying: "Thus the principle of extending the controlling powers of the Supreme Government over all the details of the other Presidencies is not only directly avowed, but even a decent freedom of opinion on their part censured as a resistance of it. We are aware that it might be difficult and would be inexpedient to define by any exact line the limits beyond which the interference of the Supreme Government ought not in any case or circumstances to go, even in the internal affairs of the subordinate Presidencies, and we would be far from countenancing in them anything like a spirit of disobedience or resistance; but we think it clear that the law did not intend the Supreme Government should assume the direction in detail of the business of the other governments as it does the direction of the divisions of country under the Bengal Government."

See P. E. Roberts, *India Under Wellesley*, p. 271.

As the chief representative of the Company in their commercial capacity the Governor-General in Council has the immediate superintendence of their commercial concerns in Bengal, and exercises a general control over the provision of the investment at the other presidencies, including a considerable degree of attention to their affairs in China. Commercial duties of Governor-General in Council

The establishment attached to the Governor-General in Council in his legislative and executive capacity, for the conduct of these various and important duties under circumstances peculiarly arduous and critical, has hitherto consisted of a secretary, and four sub-secretaries. The assistants under these officers are necessarily incompetent to afford them any effectual aid, in their more important duties. Secretariat of Governor-General in Council

From the constitution of these offices of sub-secretary, these offices were not acceptable to persons of any pretensions in the respective departments either from their rank in service, or from their talents. They have accordingly for the most part been filled by junior servants, necessarily incompetent to afford any efficient assistance in the execution of the duties of government.

It is of the greatest importance to the public interests, that the establishments of the several departments immediately connected with the legislative and executive capacity of the Governor-General in Council should be so constituted, as to ensure at the head of the respective departments, the assistance of men of ability, integrity and experience, competent to the due conduct of the ordinary duties of the government.

Establishments so constituted, will form a great check to negligence or misrule ; at the same time, that they will always be powerful instruments in the

hands of those who are zealous in the promotion of the public interests.

The Governor-General in Council therefore determined to make the situations of the public officers, who are to be his instruments for the conduct of the government of the British possessions in India, offices of high honour, and of the first emolument.

This was the only mode of enabling the Governor-General in Council to command the services of men of the first talents and ability, in the respective departments.

As connected with the principle of relieving the Governor-General in Council from all unnecessary labour of detail, our attention has been drawn to the number of papers which it has been the practice for the Governor-General in Council to attest with his own signature. Much of the time of the Governor-General in Council is occupied unnecessarily in the signature of these papers, and the despatch of the public business is often considerably impeded in obtaining his signature to them.

Governor-General in Council to be relieved of details

We have accordingly determined, that all public papers shall be authenticated by the signature of the secretary to the department. From this general rule, however, we have of course excepted our addresses to your honourable Court, and to the subordinate Presidencies and all other papers, to which considerations of respect to superior authority, or other circumstances, may render it proper that the signatures of the Governor-General in Council should be affixed. Conformably to this determination, your honourable Court will find the sets of the public proceedings which are transmitted to you, attested by the secretaries of the respective departments, by order of Governor-General in Council, instead of

being signed by the Governor-General and the members of Council.

In this review of the constitution of the supreme Government of the Company's possessions in India, it could not escape the Governor-General in Council, that the wisest system of government will but imperfectly answer its ends, unless means are at the same time taken for providing persons duly qualified for the conduct of the system.

It would be useless to enter into any argument to prove that the same general qualifications necessary for the first political, judicial, financial and commercial stations in Europe, are equally requisite for the due discharge of the duties of similar situations in India. Civil Service in Bengal

Your honourable Court can yourselves form an adequate judgment how far your servants are in general competent to discharge these high offices. You know at what age they are sent from England, and what are at that period their qualifications for the offices to which they are destined. You are also apprized how far the occupations on which the first years of their residence in India are employed are calculated to give them these qualifications.

Your servants are nominated to the highest stations of civil government, without any test of their possessing the requisite qualifications for the discharge of the functions of these offices. No such test could now indeed be required, none having been prescribed, and no means having been afforded to individuals of acquiring the necessary qualifications for public stations. Defects of the Civil Service

In consequence of this serious defect in the system of your government, it has been the practice to transfer your servants from one line of the service to another, with little regard to the quali-

fications for the offices for which they have been selected. No imputation attaches in this respect to your governments. Among those from whom the selection was to be made, there could not possibly exist any material ground of preference.

It is far from our intention in these observations to reflect on the general talents, character, or integrity of your servants on this establishment. Whatever may be their deficiencies, they are not ascribable to themselves, but to the nature of the service. Great exertions indeed have been made by individuals, and it affords matter of astonishment, that under such disadvantages they should have acquitted themselves with so much ability and success, in situations which in Europe are to be attained only by regular and systematic education and laborious exertions.

It is obvious that an education exclusively European or Indian, would not qualify your servants for the situations which they are destined to fill. The foundation of their education must be laid in England, and it must be completed systematically after their arrival in India.

Fort William College

The Governor-General in Council has, therefore, determined to found an establishment at this Presidency, of the nature of a collegiate institution, for the purpose of enabling the servants of the Company to perfect themselves in those acquirements, which form the necessary qualifications for the different lines of the service, in which they may choose to engage. It is our intention that the junior servants shall be attached to this institution for a certain period after their arrival, instead of being employed in the unprofitable occupation of transcribing papers, and abandoned to the dictates of their own discretion, both with regard to their morals and acquirements.

An institution of this description will ensure a

succession of men, equal to the support of the great interests of the Company, and of the British nation in India.

The above observations with regard to the education and qualifications of your civil servants in Bengal, for the conduct of civil government apply with equal force to your servants under the other Presidencies. Under our instructions to Fort St. George, of the 31st December last, and the orders which we have it in contemplation to issue to Bombay, the civil servants on those establishments will be shortly called upon to exercise the same important functions, as the civil servants in Bengal.

Civil Service in Madras and Bombay

Whether it will be advisable to bring the junior servants attached to the Establishments of Fort St. George and Bombay to Bengal in the first instance, in order to enable them to acquire the necessary qualifications here, or to found institutions for the purpose at those Presidencies, is a question which will demand further consideration.

When the details of the plan of the intended institution shall have been arranged, we shall lose no time in forwarding it to your honourable Court. As it cannot fail to redound equally to the honour and happiness of the civil servants, as well as to promote the solid and substantial interests of the Company, and of the nation, we feel the strongest conviction that it will meet your approbation.

As connected with the subject of forming the characters of your servants, we cannot omit to notice the state of your religious establishments in this country.

Religious establishments

The sentiments which have occurred to the Governor-General regarding these establishments, will hereafter form the subject of a separate address to your honourable Court from his Lordship.

Fort William College

Without waiting for the sanction of the Directors Lord Wellesley circulated a draft Regulation for giving effect to his plan of establishing at Calcutta a collegiate institution for civil servants. This draft, being approved by the Council, became Regulation IX of 1800. The Fort William College actually opened on November 24, 1800. The Governor-General was the Patron and Visitor of the College; the members of the Supreme Council and Judges of the *Sadar Dewani* and *Sadar Nizamot Adalats* were its Governors. The immediate government of the college was vested in a Provost and a Vice-Provost and such other officers as the Patron and Visitor thought fit to appoint.

In their letter dated January 27, 1802, the Directors vetoed Lord Wellesley's scheme and ordered the immediate abolition of the Fort William College. "Although their objection was mainly based on the ground of expense, they strongly disapproved of the procedure adopted by Wellesley in founding the college without their previous sanction". The Governor-General justified his scheme in a despatch dated August 5, 1802. The Board of Control now supported him, but the Court remained obdurate. "There was a long-drawn-out controversy[1] between the Court of Directors and the Board of Control on the subject, which, however, diverted from the main issue and centred on the question of the respective constitutional competence of the two bodies". At last a compromise was arrived at, and a despatch dated September 2, 1803, authorised the Governor-General to continue the Fort William College until further orders. Under the Court's order of May 21, 1806, the expenditure of the college was limited to sicca rupees 1,50,000. Henceforth the college was meant only for the instruction of the Bengal civil servants in the Indian languages, the rudiments of which they had already acquired at the Haileybury College. The college was finally abolished in January, 1854.[2]]

Extent of British Empire in India

The British possessions in India now constitute one of the most extensive and populous empires in the world. The immediate administration of the government of the various provinces and nations composing this empire is principally confided to the European civil servants of the East India Company.

1 See Philips, *The East India Company*, pp. 125-129.

2 See A. K. Ghosal, *Civil Service in India*, Chapter VI.

Those provinces, namely, Bengal, Behar, Orissa, and Benares, the Company's Jaghire in the Carnatic, the northern Circars, the Baramahal, and other districts ceded by the peace of Seringapatam, in 1792, which are under the more immediate and direct administration of the European civil servants of the Company, are acknowledged to form the most opulent and flourishing parts of India; in which property, life, order, and religious liberty are more secure, and the people enjoy a larger portion of the benefits of good government, than any other country in this quarter of the globe. The duty and policy of the British Government in India therefore require, that the system of confiding the immediate exercise of every branch and department of the government to Europeans, educated in its own service, and subject to its own direct control, should be diffused as widely as possible, as well with a view to the stability of our own interests, as to the happiness and welfare of our native subjects. This principle formed the basis of the wise and benevolent system introduced by Lord Cornwallis, for the improvement of the internal government of the provinces immediately subject to the Presidency of Bengal.

Cornwallis system of administration

In proportion to the extension of this beneficial system, the duties of the European civil servants of the East India Company are become of greater magnitude and importance, the denominations of writer, factor, and merchant, by which the several classes of the civil service are still distinguished, are now utterly inapplicable to the nature and extent of the duties discharged, and of the occupations pursued by the civil servants of the Company.

Mercantile designations inapplicable to Company's servants

To dispense justice to millions of people of various languages, manners, usages and religions; to administer a vast and complicated system of revenue throughout districts equal in extent to some of the

Duties of Civil Servants:

most considerable kingdoms in Europe; to maintain civil order in one of the most populous and litigious regions of the world; these are now the duties of the larger proportion of the civil servants of the Company. The senior merchants composing the five Courts of Circuit and Appeal under the Presidency of Bengal exercise in each of those Courts a jurisdiction of greater local extent, applicable to a larger population, and occupied in the determination of causes infinitely more intricate and numerous than that of any regularly constituted courts of justice in any part of Europe. The senior or junior merchants, employed in the several magistracies and Zillah Courts, the writers or factors filling the stations of registrars and assistants to the several courts and magistrates, exercise in different degrees, functions of a nature, either purely judicial, or intimately connected with the administration of the police, and with the maintenance of the peace and good order of their respective districts. Commercial or mercantile knowledge, is not only unnecessary throughout every branch of the judicial department but those civil servants who are invested with the powers of magistracy, or attached to the judicial department in any ministerial capacity, although bearing the denomination of merchants, factors or writers, are bound by law, and by the solemn obligation of an oath, to abstain from every commercial and mercantile pursuit; the mercantile title which they bear, not only affords no description of their duty, but is entirely at variance with it.

(1)-Judicial

The pleadings in several courts, and all important judicial transactions, are conducted in the native languages. The law which the Company's judges are bound to administer throughout the country is not the law of England, but that law to which the natives had long been accustomed under their former sovereigns, tempered and mitigated by the voluminous

Heavy duties of judicial officers

regulations of the Governor-General in Council, as well as by the general spirit of the British constitution. These observations are sufficient to prove, that no more arduous or complicated duties of magistracy exist in the world, no qualifications more various, or more comprehensive, can be imagined than those which are required from every British subject, who enters the seat of judgment within the limits of the Company's empire in India.

To the administration of the revenue, many of the preceding observations will apply with equal force ; the merchants, factors and writers, employed, in this department also, are bound by law to abjure the mercantile denomination appropriate to their respective classes in the Company's service ; nor is it possible for a collector of the revenue, or for any civil servant employed under him, to discharge his duty with common justice, either to the state, or to the people, unless he shall be conversant in the language, manners, and usages of the country ; and in the general principles of the law, as administered in the several courts of justice. In addition to the ordinary judicial and executive functions of the Judges, Magistrates, and Collectors, the Judges and Magistrates occasionally act in the capacity of Governors of their respective districts, employing the military, and exercising other extensive powers. The Judges, Magistrates, and Collectors, are also respectively required by law to propose, from time to time, to the Governor-General in Council, such amendments of the existing laws, or such new laws as may appear to them to be necessary for the welfare and good government of their respective districts. In this view the civil servants employed in the departments of Judicature and Revenue, constitute a species of subordinate legislative council to the Governor-General in Council, and also form a channel of com-

(2) Revenue

(3) Executive

(4) Military

(5) Legislative

munication, by which the Governments ought to be enabled, at all times to ascertain the wants and wishes of the people. The remarks applied to these two main branches of the civil service, namely, those of Judicature and Revenue, are at least equally forcible in their application to those branches which may be described under the general terms of the Political and Financial Departments, comprehending the offices of Chief Secretary, the various stations in the Secretary's office, in the Treasury, in the office of Accountant-General, together with all the public officers employed in conducting the current business at the seat of Government. To these must be added the Diplomatic branch, including the Secretary in the political department, and the several residencies at the Courts of our dependent and tributary Princes, or of other native powers of India.

(6) Political
(7) Financial
(8) Diplomatic

It is certainly desirable, that all these stations should be filled by the civil servants of the Company: it is equally evident, that qualifications are required in each of these stations, either wholly foreign to commercial habits, or far exceeding the limits of a commercial education.

(9) Commercial

Even that department of this empire, which is denominated exclusively commercial, requires knowledge and habits different, in a considerable degree, from those which form the mercantile character in Europe ; nor can the Company's investment ever be conducted with the greatest possible advantage and honour to themselves, or with adequate justice to their subjects, unless their commercial agents shall possess many of the qualifications of statesmen, enumerated in the preceding observations. The manufacturers, and other industrious classes, whose productive labour is the source of the investment, bear so great a proportion to the total population of

the Company's dominions, that the general happiness and prosperity of the country must essentially depend on the conduct of the commercial servants employed in providing the investment : their conduct cannot be answerable to such a charge, unless they shall be conversant in the native languages, and in the customs and manners of the people, as well as in the laws by which the country is governed. The peace, order, and welfare of whole provinces may be materially affected by the malversations, or even by the ignorance and errors of a commercial resident, whose management touches the dearest and most valuable interests, and enters into the domestic concerns of numerous bodies of people, active and acute from habitual industry, and jealous of any act of power injurious to their properties, or contrary to their prejudices and customs.

Changed position of Company's Civil Servants

The civil servants of the English East India Company, therefore, can no longer be considered as the agents of a commercial concern. They are, in fact, the ministers and officers of a powerful sovereign ; they must now be viewed in that capacity, with reference, not to their nominal, but to their real occupations. They are required to discharge the functions of Magistrates, Judges, Ambassadors, and Governors of provinces, in all the complicated and extensive relations of those sacred trusts and exalted stations, and under peculiar circumstances, which greatly enhance the solemnity of every public obligation, and aggravate the difficulty of every public charge. Their duties are those of statesmen in every other part of the world, with no other characteristic differences than the obstacles opposed by an unfavourable climate, by a foreign language, by the peculiar usages and laws of India, and by the manners of its inhabitants. Their studies, the discipline of their education, their habits of life, their manners

and morals should, therefore, be so ordered and regulated as to establish a just conformity between their personal consideration, and the dignity and importance of their public stations, and to maintain a sufficient correspondence between their qualifications and their duties. Their education should be founded in a general knowledge of those branches of literature and science which form the basis of the education of persons destined to similar occupations in Europe. To this foundation should be added an intimate acquaintance with the history, languages, customs and manners of the people of India, with the Mahommedan and Hindoo codes of law and religion, and with the political and commercial interests and relations of Great Britain in Asia. They should be regularly instructed in the principles and system which constitute the foundation of that wise code of regulations and laws enacted by the Governor-General in Council for the purpose of securing to the people of this empire the benefit of the ancient and accustomed laws of the country, administered in the spirit of the British constitution. They should be well informed of the true and sound principles of the British constitution, and sufficiently grounded in the general principles of ethics, civil jurisprudence, the law of nations, and general history, in order that they may be enabled to discriminate the characteristic differences of the several codes of law administered within the British Empire in India, and practically to combine the spirit of each in the dispensation of justice, and in the maintenance of order and good government. Finally, their early habits should be so formed, as to establish in their minds such solid foundations of industry, prudence, integrity, and religion, as should effectually guard them against those temptations and corruptions with which the nature of this climate, and the peculiar depravity of

Special education and training of Civil Servants required

Discipline which Civil Servants should pass through

the people of India, will surround and assail them in every station, especially upon their first arrival in India. The early discipline of the service should be calculated to counteract the defects of the climate and the vices of the people, and form a natural barrier against habitual indolence, dissipation, and licentious indulgence ; the spirit of emulation, in honourable and useful pursuits, should be kindled and kept alive by the continual prospect of distinction, and reward, of profit, and honour ; nor should any precaution be relaxed in India, which is deemed necessary in England, to furnish a sufficient supply of men qualified to fill the high offices of the State with credit to themselves and with advantage to the public. Without such a constant succession of men in the several branches and departments of this Government, the wisdom and benevolence of the law must prove vain and inefficient. Whatever course and system of discipline and study may be deemed requisite in England to secure an abundant and pure source for the efficient supply of the public service, the peculiar nature of our establishments in the East, (so far from admitting any relaxation of those wise and salutary rules and restraints,) demands that they should be enforced with a degree of additional vigilance and care, proportioned to the aggravated difficulties of the civil service, and to the numerous hazards surrounding the entrance of public life in India.

Existing system

It is unnecessary to enter into any examination of facts to prove, that no system of education, study, or discipline, now exists, either in Europe or in India, founded on the principles, or directed to the objects described in the preceding pages ; but it may be useful in this place to review the course through which the junior civil servants of the East India Company now enter upon the important duties of

Stages in Careers of Company's Civil Servants. :

their respective stations, to consider to what degree they now possess or can attain any means of qualifying themselves sufficiently for those stations, and to examine whether the great body of the civil servants of the East India Company, at any of the Presidencies, can now be deemed competent to discharge their arduous and comprehensive trusts in a manner correspondent to the interests and honour of the British name in India, or to the prosperity and happiness of our native subjects.

(i) Age of entering service

The age at which the writers usually arrive in India is from sixteen to eighteen; their parents or friends in England, from a variety of considerations, are naturally desirous, not only to accelerate the appointment at home, but to despatch the young men to India at the earliest possible period. Some of these young men have been educated with an express view to the civil service in India, on principles utterly erroneous, and inapplicaple to its actual condition; conformably to this error, they have received a limited education, confined principally to commercial knowledge, and in no degree extended to those liberal studies which constitute the basis of education at public schools in England. Even this limited course of study is interrupted at the early period of fifteen or seventeen years.

(ii) Limited education

It would be superfluous to enter into any argument to demonstrate the absolute insufficiency of this class of young men to execute the duties of any station whatever in the civil service of the Company beyond the menial, laborious, unwholesome and unprofitable duty of a mere copying-clerk. Those who have received the benefits of a better education, have the misfortune to find the course of their studies prematurely interrupted at the critical period when its utility is first felt, and before they have been enabled to secure the fruits of early application.

Both descriptions of young men, those whose education has been originally erroneous and defective, and those, the early promise of whose studies has been unseasonably broken, once arrived in India, are equally precluded from the means, either of commencing a new situation, or of prosecuting that course which had been prematurely interrupted. Not only no encouragement is offered by the present constitution and practice of the civil service to any such pursuits, but difficulties and obstacles are presented by both, which render it nearly impossible for any young man, whatever may be his disposition, to pursue any systematic plan of study, either with a view to remedy the defects, or to improve the advantages of his former education.

On the arrival of the writers in India, they are either stationed in the interior of the country, or employed in some office at the Presidency.

(iii) Work in interior of the country

If stationed in the interior of the country, they are placed in situations which require a knowledge of the language and customs of the natives; or of the regulations and laws; or of the general principles of jurisprudence; or of the details of the established system of revenue; or of the nature of the Company's investment; or of many of these branches of information combined. In all these branches of knowledge, the young writers are totally uninformed. They are consequently unequal to their prescribed duties. In some cases, their superior in office experiencing no benefit from their services, leaves them unemployed. In this state many devote their time to those luxuries and enjoyments which their situation enables them to command, without making any effort to qualify themselves for the important stations to which they are destined. They remain sunk in indolence, until, from their station in the service, they succeed to offices of high public trust.

Positive incapacity is the necessary result of these pernicious habits of inaction; the principles of public integrity are endangered, and the successful administration of the whole Government exposed to hazard. This has been the unhappy course of many, who have conceived an early disgust in provincial stations against business, to which they have found themselves unequal, and who have been abandoned to the effects of despondency and sloth.

Bad effects of perfunctory work in the interior of the country

Even the young men whose dispositions are the most promising, if stationed in the interior of the country at an early period after their arrival in India, labour under great disadvantages. They also find themselves unequal to such duties as require an acquaintance with the languages, or with the branches of knowledge already described. If intensely employed in the subordinate details of office, they are absolutely precluded from reviving any former acquirements, or from establishing those foundations of useful knowledge indispensably necessary to enable them hereafter to execute the duties of important stations with ability and credit. Harassed with the ungrateful task of transcribing papers and accounts, or with other equally fatiguing and fruitless labours of a copying-clerk or index-maker, their pursuit of useful knowledge cannot be systematic; their studies must be desultory and irregular, and their attention to any definite pursuit is still more distracted by the uncertainty of the nature of those employments to which they may hereafter be nominated. No course of study having been pointed out by public institution, no selection prescribed by authority of the branches of knowledge appropriate to each department and class of the service, diligence is lost for want of a guide, and the most industrious are discouraged by the apprehension, that their studies may prove fruitless,

and may frustrate instead of promoting their advancement in the public service.

When their rank in the service has entitled them to succeed to offices of importance, the current duties of those offices necessarily engross their whole attention. It is then too late to revert to any systematic plan of study with a view to acquire those qualifications, of which, in the ordinary discharge of their official functions, they feel the hourly want. If, at this late season, they should make effort to acquire knowledge, it must be sought by the interruption of their current business, to the detriment of the public interests, and to the inconvenience or injury of the individuals subject to their authority.

No systematic study possible for civil servants on duty

With respect to the young men attached to offices at the Presidency, their duty consists chiefly in transcribing papers. This duty, if pursued with the utmost diligence and assiduity, affords little knowledge of public affairs, is often prejudicial to health, and would be better performed by any native or Portuguese writer They attain no distinct knowledge of the public records ; because they pursue no regular course of reading, examining, or comparing the documents which compose those records ; they have, indeed, scarcely time to understand and digest those papers which they are employed to transcribe ; their acquaintance even with the current affairs of the Government must be limited and partial, and must rather tend to confuse than to instruct their minds. At the expiration of the period during which they usually remain in these situations at the Presidency, their knowledge of public business is necessarily superficial and incorrect. Having had little intercourse with the natives, these young men are in general extremely deficient in the knowledge of the language of the country. In the meanwhile their

(iv) Work at the Presidency

Bad effects of work at the Presidency

close and laborious application to the hourly business of transcribing papers has been an insuperable obstacle to their advancement in any other branch of knowledge, and at the close of two or three years, they have lost the fruits of their European studies, without having gained any useful knowledge of Asiatic literature or business. Those whose dispositions lead them to idleness and dissipation, find greater temptations to indulgence and extravagance at the Presidency than in the provinces; many instances occur in which they fall into irretrievable course of gaming and vice, and totally destroy their health and fortunes. Some succeed, in the ordinary progress of the service, to employments, in which their incapacity or misconduct becomes conspicuous to the natives, disgraceful to themselves and to the British name, and injurious to the State.

No proper supervision over young civil servants

All these descriptions of young men, upon their first arrival in India, are now exposed to a disadvantage, the most perilous which can be encountered at an early period of life. Once landed in India, their studies, manners, morals, expenses or conduct are no longer subject to any degree of regulation or direction. No system is established for their guidance, improvement, or restraint; no authority has been constituted with either the duty or power of enforcing any such system; and they are abandoned, at the age of sixteen or eighteen, with affluent incomes to pursue their own inclinations, without the superintendence or control of parent, guardian, or master, often without a friend to advise or admonish, or even to instruct them in the ordinary details and modes of an Indian life.

The practice of consigning the young writers to the care of friends resident in India, affords no adequate remedy to this evil. Those friends are often incompetent to the arduous and delicate task imposed

upon them ; and it frequently happens that they may be so far removed from the spot at which the young man may be stationed by the Government, that years may elapse before he may have been able even to see the person appointed by his European friends to superintend his introduction into India.

In earlier periods of our establishment, when the annual incomes of the civil servants were of a more fluctuating nature, and derived from sources more vague and indefinite, the tables of the senior servants were usually open to those recently arrived from Europe ; and the young writers, upon their first landing in India, were frequently admitted and domiciliated in the families established at the Presidency or in the provinces.

The objections to this loose and irregular system are numerous and obvious. Without entering upon that topic, it is sufficient to observe, that the definite and regular sources of profit, established in the civil service by Lord Cornwallis, have occasioned a material alteration in the economy of every private family among the civil servants.

Effect of curtailing income of civil servants

Incomes being limited and ascertained, and no other source of emolument now existing beyond the annual savings from the regulated salaries, the tables of the civil servants can no longer be open to receive the numerous body of writers annually arriving from Europe ; still less can these young men be generally admitted to reside habitually in families of which the annual expenses are now necessarily restrained within certain and regular bounds.

Many of the young men, on their first arrival, are, therefore, compelled to support the expense of a table ; the result of this necessity is obvious, and forms one leading cause of expense and dissipation.

Under all these early disadvantages, without rule

(v) Bad effects of early career

or system to direct their studies ; without any prescribed object of useful pursuit connected with future reward, emolument, or distinction ; without any guide to regulate, or authority to control their conduct, or to form, improve, or preserve their morals ; it is highly creditable to the individual characters of the civil servants of the East India Company, that so many instances have occurred in various branches and departments of the civil service at all the Presidencies, of persons who have discharged their public duties with considerable respect and honour.

It has been justly observed, that all the merits of the civil servants are to be ascribed to their own characters, talents, and exertions while their defects must be imputed to the constitution and practice of the service, which have not been accommodated to the progressive changes of our situation in India, and have not kept pace with the growth of this empire, or with the increasing extent and importance of the functions and duties of the civil servants.

Study of languages in Bengal

The study and acquisition of the languages have, however, been extended in Bengal, the general knowledge and qualifications of the civil servants have been improved. The proportion of the civil servants in Bengal, who have made a considerable progress towards the attainment of the qualifications requisite in their several stations, appears great, and even astonishing, when viewed with relation to the early disadvantages, embarrassment, and defects of the civil service. But this proportion will appear very different when compared with the exigencies of the State, with the magnitude of these provinces, and with the total number of the civil servants, which must supply the succession to the great offices of the Government. It must be admitted that the great body of the civil servants in Bengal is not at present sufficiently qualified to discharge the duties of this

several arduous stations in the administration of this empire ; and that it is peculiarly deficient in the judicial, fiscal, financial, and political branches of the Government.

Madras and Bombay Civil Services more defective than that of Bengal

The state of the civil services of Madras and Bombay is still more defective than that of Bengal. Various cases have concurred to aggravate, in an extreme degree, at both those Presidencies all the defects existing in the civil service of Bengal, while many circumstances peculiar to those Presidencies have favoured the growth of evils at present unknown in this. The condition of the writers, on their first arrival at either of the subordinate Presidencies, is still more destitute, and more exposed to hazard, than at Calcutta.

Study of languages in Madras and Bombay

The study or acquisition of the languages, and of other necessary attainments, has not been extended in the civil service at Madras or Bombay to any considerable degree. To this remark, eminent and meritorious individual exceptions exist in the civil service at both subordinate Presidencies ; but those exceptions are not sufficiently numerous to constitute a general rule. But whatever may be the actual condition of the civil service in its superior classes at any of the Presidencies, if the arduous duties of that service have been justly defined in the preceding pages, if the qualifications requisite for their discharge have been truly described, if the neglected and exposed condition of the early stages of the service has not been exaggerated, it must be admitted, that those stages of the service require additional safeguards, and a more effectual protection. The extraordinary exertions of individual diligence, the partial success of singular talents, or of peculiar prudence and virtue, constitute no rational foundation of a public institution, which should rest on general comprehensive and uniform principles. If the actual

state of the higher classes of the civil service were such as to justify a confidence in the general competency of the civil servants to meet the exigencies of their duty, the necessity of correcting the evils stated in the preceding pages would still remain, unless the facts alleged could be disproved. It would still be a duty incumbent on the Government to remove any obstacles tending to embarrass or retard the progress of their servants in attaining the qualifications necessary for their respective stations. The Government is not released from this duty by the extraordinary, or even general exertion of those servants to surmount the early difficulties of the first stages of the service. If the good Government of this empire be the primary duty of its sovereign, it must ever be a leading branch of that duty to facilitate to the public officers and ministers the means of qualifying themselves for their respective functions. The efficiency of the service cannot wisely or conscientiously be left to depend on the success of individual or accidental merit, struggling against the defects of established institutions. A due administration of our affairs can alone be secured by the constant effect of public institutions, operating in a regular and uninterrupted course upon the various characters, talents, and acquirements of individuals. The nature of our establishment should furnish fixed and systematic encouragement to animate, to facilitate, to reward the progress of industry and virtue ; and fixed and systematic discipline, to repress and correct the excesses of contrary dispositions

Comprehensive system of correcting defects necessary

From these remarks may be deduced the indispensable necessity of providing some effectual and speedy remedy for the defects in the education of the young men destined to the civil service in India. The nature of that remedy will afford matter of serious discussion.

It may, however, be useful, previously to that discussion to advert to a general topic of argument, which may possibly be adduced to disprove the necessity of any new institution for the improvement of the civil service of the East India Company. It may be contended, that this service, through a long period of years, and in the course of various changes and chances, has always furnished men equal to the exigency of the occasion; that servants of the Company have never been wanting to conduct to a happy issue the numerous revolutions which have taken place in the affairs of the Company in India; and that these eminent personages have ultimately fixed the British empire in India on the most solid foundations of glory, wealth, and power. Why, therefore, should we apprehend, that this source, hitherto so fruitful and furnishing so abundant a supply of virtue and talents, will fail in the present age, and prove insufficient to the actual demands of our interests in this quarter of the globe? The answer to this topic of argument is obvious. Extraordinary combinations of human affairs, wars, revolutions, and all those unusual events which form the marked features and prominent characters of the history of mankind, naturally disclose talents and exertions adopted to such emergencies. That the civil or military service of the East India Campany has supplied persons calculated to meet all the wonderful revolutions of affairs in India, is a circumstance not to be attributed to the original or peculiar constitution of either service at any period of time. That constitution has undergone repeated alterations at the suggestion, and under the direction of the great characters which it has produced; and it has still been found answerable to every new crisis of an extraordinary nature. But it must never be forgotten, that the successive efforts of those eminent personages,

Possible criticism of plan of reform.

Why should we change a system that has faced so many dangers successfully?

Wellesley's reply

and the final result of various revolutions and wars, have imposed upon the East India Company the arduous and sacred trust of governing an extensive and populous empire. It is true that this empire must be maintained in some of its relations by the same spirit of enterprize and boldness which acquired it. But duty, policy and honour require that it should not be administered as a temporary and precarious acquisition, as an empire conquered by prosperous adventure, and extended by fortunate accident, of which the tenure is as uncertain as the original conquest and successive extensions were extraordinary; it must be considered as a sacred trust, and a permanent possession. In this view its internal Government demands a constant, steady, and regular supply of qualifications, in no degree similar to those which distinguished the early periods of our establishment in India, and laid the first foundations of our empire. The stability of that empire, whose magnitude is the accumulated result of former enterprize, activity and resolution, must be secured by the durable principles of internal order; by a pure, upright, and uniform administration of justice; by a prudent and temperate system of revenue, by the encouragement and protection of industry, agriculture, manufacture and commerce; by a careful and judicious management of every branch of financial resource; and by the maintenance of a just, firm, and moderate policy towards the native powers of India. To maintain and uphold such a system in all its parts, we shall require a succession of able magistrates, wise and honest judges, and skilful statesmen, properly qualified to conduct the ordinary movements of the great machine of Government.

Aim of British rule

The military establishments of this empire form no part of the subject of the present enquiry. It may

be sufficient to observe in this place, that their extent, and the spirit in which they require to be governed, must correspond with the magnitude of the empire, and with the general character of our civil policy. In the civil service, we must now seek, not the instruments by which kingdoms are overthrown, revolutions accomplished, or wars conducted, but an inexhaustible supply of useful knowledge, cultivated talents, and well ordered and disciplined morals. These are the necessary instruments of a wise and well regulated Government. These are the genuine and unfailing means of cultivating and improving the arts of peace; of diffusing affluence and happiness, willing obedience, and grateful attachment over every region and district of this vast empire; and of dispensing to every class and description of our subjects the permanent benefits of secure property, protected life, undisturbed order, and inviolate religion. It is not the nature of these inestimable blessings to spring from a turbid source, or to flow in a contracted and irregular channel.

Wanted good administrators

The early education of the civil servants of the East India Company is the source from which will ultimately be derived the happiness or misery of our native subjects; and the stability of our Government will bear a due proportion to its wisdom, liberality, and justice.

From the preceding discussion, it appears, that the actual state of the Company's civil service in India is far removed from perfection or efficiency, and that the cause of this defect is to be found principally, if not exclusively, in the defective education of the junior civil servants, and in the insufficient discipline of the early stages of the service. The facts, which have been reviewed in the course of this discussion, furnish the main principles on which an

improved system of education and discipline may be founded with a view to secure the important ends of such an institution.

The defects of the present condition of the civil service may be comprised under the following heads:

Defects of present system

First, An erroneous system of education in Europe confined to commercial and mercantile studies.

Secondly, The premature interruption of a course of study judiciously commenced in Europe.

Thirdly, The exposed and destitute condition of young men on their first arrival in India, and the want of a systematic guidance and established authority to regulate and control their moral and religious conduct in the early stages of the service.

Fourthly, The want of similar system and authority to prescribe and enforce a regular course of study, under which the young men upon their arrival in India might be enabled to correct the errors, or to pursue and confirm the advantages of their European education, and to attain a knowledge of the languages, laws, usages and customs of India, together with such other branches of knowledge, as are requisite to qualify them for their several stations.

Fifthly, The want of such regulations as shall establish a necessary and inviolable connection between promotion in the civil service, and the possession of those qualifications requisite for the due discharge of the several civil stations.

Wellesley's plan of reform

It is obvious, that an education exclusively European, or Indian, would not afford an adequate remedy for such of these defects, as relate to the morals and studies of the East India Company's servants, and would not qualify them for the discharge of duties of a mixed and complicated nature, involving the combined principles of Asiatic and

European policy and government. Their education must therefore be of a mixed nature, its foundation must be judiciously laid in England, and the superstructure systematically completed in India.

An important question may arise, with respect to the proportion of time to be employed in that part of the education of the junior civil servants, which should be appropriated to England; and completed previously to their departure for India. It may be contended, that many of the enumerated evils may be precluded by not allowing the writers to proceed to India until they shall have reached a more advanced age, than that at which they now usually embark, and by requiring them to undergo examinations in England, for the purpose of ascertaining their proficiency in the branches of knowledge necessary to the discharge of their duties in India.

Period of education of civil servants in Europe

To this arrangement various objections of a private, but most important nature, will arise in the mind of every parent, who may have destined his children for India. To attain any considerable proficiency in the course of education and study described in this paper, must necessarily require the detention of the student in Europe to the age of 20 or 22 years; many parents could not defray the expense of such an education in England, even if the other means of prosecuting it now existed, or could hereafter be provided at any school or college at home.

Difficulties in lengthening the period of study in Europe

Other objections of a private nature might be stated against this plan; but those which are founded on public considerations appear to be absolutely insurmountable. It is a fundamental principle of policy in the British Establishments in the East Indies, that the views of the servants of the Company should terminate in the prospect of returning to England, there to enjoy the emoluments arising

from a due course of active and honourable service in India.

Were the civil servants, instead of leaving England at the age of sixteen or seventeen, to be detained until the age of twenty or two-and-twenty ; a great proportion of them must abandon all hope of returning with a moderate competence to their native country.

Remaining in England to this advanced age, many would form habits and connections at home, not to be relinquished at that period of life without great reluctance ; and few would accommodate themselves with readiness and facility to the habits, regulations and discipline of the service in India.

Civil Servants must be induced to return home after service in India.

While these causes would render the civil servants intractable instruments in the hands of the Government of India, the regular progress through the service would also be retarded. Twenty-five years may be taken as the period within which a civil servant may regulary acquire, with proper habits of economy, an independent fortune in India. Upon this calculation, before the most successful could hope to be in a situation to return to England, they would have attained an age, when many of the powerful affections and inducements, which now attract the servants of the Company to return to their native country, would be greatly weakened if not entirely extinguished.

At that age, many from necessity, and many probably from choice, would establish themselves permanently in India. It is unnecessary to detail the evil consequences which would result to the British interests in India, were such an habit to become general in the civil service.

Detention in England to the age of twenty or twenty-two years would certainly afford the writers

an opportunity of advancing their knowledge in the necessary branches of European study; but within that period of time, even in those branches, it could scarcely be completed; especially in the important sciences of general ethics and jurisprudence (for how few understandings are equal to such a course of study previously to the age of twenty), and it would be entirely defective in the essential point of connecting the principles of those sciences with the laws of India, and with the manners and usages of its inhabitants. No establishment formed in England could give a correct[1] practical knowledge of the languages, laws and customs of India, of the peculiar habits and genius of the people, of their mode of transacting business, and of the characteristic features of their vices or virtues. These most essential acquirements would, therefore, remain to be attained after the arrival of the student in India, at an age when the study of languages is attended with additional difficulties, when any prescribed course of study, when any systematic discipline, or regular restraint becomes irksome, if not intolerable. As the East India Company's servants would arrive in India at a period of life too far advanced to admit of subjection to any system of public discipline or control, they must necessarily be left to the dictates of their own discretion with regard to whatever part of their knowledge had been left incomplete in Europe.

Education in India can alone familiarise civil servants with Indian languages and ideas.

The wants and expenses of individuals arriving in India at the age of twenty or twenty-two years would greatly exceed the scale of the public allowances to the junior servants. At this age no restraint could be applied in India to their moral conduct, for the purpose of protecting them against the peculiar

Question of income of civil servants

1 Sir W. Jones was not intelligible to the natives of India, when he arrived at Calcutta, in any of the oriental languages.

depravities incident to the climate, and to the character of the natives.

From the early age at which the writers are now usually sent to India, opportunity is afforded to the government on the spot of obtaining a knowledge of the characters of individuals, before they become eligible to stations of trust and importance. Of this advantage the government would be in a great degree deprived, if the East India Company's servants were all detained in England until the age of twenty or twenty-two ; this inconvenience would prove nearly an insurmountable impediment to the important and necessary rule of selecting for public office, those best qualified to discharge its duties with propriety and effect.

Civil Servants must come to India at early age.

The junior civil servants must, therefore, continue to embark for India at the age of fifteen or sixteen, that they may be tractable instruments in the hands of the government of the country ; that their morals and habits may be duly formed and protected by proper safeguards against the peculiar nature of the vices and characteristic dangers of Indian society ; that they may be enabled to pass through the service before the vigour of life has ceased, and to return with a competent fortune to Europe, while the affections and attachments which bind them to their native country, continue to operate with full force ; and lastly, that they may possess regular, seasonable and certain means of attaining the peculiar qualifications necessary for their station.

Under all these circumstances, the most deliberate and assiduous examination of all the important questions considered in this paper, determined the Governor-General to found a Collegiate Institution at Fort William.

27. COMPLAINT OF COURT OF DIRECTORS[1] AGAINST BOARD OF CONTROL, 1816.

[This protest related to the conduct of the Earl of Buckinghamshire, President of the Board of Control, 1812-1816 Lord Hobart, afterwards fourth Earl of Buckinghamshire was probably[2] nominated as Governor-General by the Court of Directors on December 24, 1793 But Sir John Shore had already reached Calcutta (March, 1793) and taken charge from Lord Cornwallis (October, 1793) Lord Hobart was then sent as Governor of Madras (September, 1794) 'with a clear promise of the succession in Bengal'. He was recalled by the Court of Directors in 1798 as a result of his violent quarrel with Sir John Shore over the affairs of the Nawab of the Carnatic.[3] He became in succession Secretary of State for War and the Colonies (1801-1804), Chancellor of the Duchy of Lancaster (1805, 1812), Postmaster General (1806-1807) and President of the Board of Control (1812-1816). Lord Ripon's biographer says, "It was from his maternal grand-father (Earl of Buckinghamshire) that Goderich (Lord Ripon) derived the foundations of all his views on Indian politics. The fourth Earl of Buckinghamshire was an Indian statesman to whom sufficient justice has not been done...........he was a man of strong character, of great courage, and, though a staunch Tory, capable of very definite liberal opinions. He first distinguished himself as a singularly upright and public-spirited Governor of Madras, where he won for himself the confidence and affection of the whole Presidency. But it was during his short tenure of the Board of Control in Lord Liverpool's Administration that he gave evidence of the larger statesmanship which entitles him to rank among the pioneers of Liberal reform in India. It was he who, on the occasion of the renewal of the Charter in 1813, abolished the trade monopoly of the Company and threw open the commerce

1 See C. H. Philips, *The East India Company*, Chapter VII.

2 Lord Curzon, *British Government in India*, Vol II, p 81.

3 *Life of Lord Teignmouth*, Vol. 1, pp. 247, 297, 353. 393

of India to the world. His speeches on that occasion anticipated in broad outline much of the modern Liberal doctrine of Indian administration. He startled the Nabobs and ex-Viceroys by avowing his readiness to abolish the Charter altogether in the event of any recalcitrancy on the part of the Company. He strongly emphasized the direct responsibility of the Crown for the welfare of the country, and declared ....that the United Kingdom could not divest itself of its duty to promote 'the moral improvement and social happiness of the people' and even to assure 'the security of their property and personal freedom'. These were bold and unfamiliar words a century ago Buckinghamshire, in short, was a precursor of Bentinck, of whom Goderich said many years afterwards that he had always 'endeavoured to follow in his footsteps "[1]

A modern writer says, "In that position (i.e, as Governor of Madras) he had shown himself to be energetic but also headstrong and quarrelsome. He was particularly ill-disposed towards the Directors, who had not only supported Sir John Shore............against him, but had also strongly criticised his general policy at Madras, had heartily concurred in his recall, and in his opinion, had finally added insult to injury by cavilling at granting him a pension. Knowing neither how to manage nor conciliate others, Buckinghamshire was a most unsuitable head of the Board.............. ..Buckinghamshire's conduct, evincing throughout a petty desire to humiliate the Directors, had been reprehensible ; by his blunders he alienated a well-disposed Court of Directors and proved himself to be totally unsuited to his position "[2]]

'Systematic and active management'

The Board employs its powers not merely in the way of superintendence and control, but in systematic and active management. Not only have very important despatches originated with and been proposed by the Board conveying to the Governments in India peremptory and detailed instructions.......without any previous consultation with the Local Governments (a course of proceeding without example in former times) but the drafts prepared under the direction of the "Chairs" and approved by the Com-

1 Lucien Wolf, *Life of Lord Ripon*, Vol I, pp. 100-101.

2 C. H. Philips, *The East India Company*, pp. 183, 208.

mittee of Correspondence[1] have frequently, without either personal or written communication with the "Chairs", been so much altered in "previous communication"[2] as completely to change their structure and character. In the paragraphs which were not wholly expunged there are generally to be found a number of verbal alterations...... that, in not a few instances, cannot stand the test of sound criticism.... ... .even where the Board seems to agree with the general view of subjects taken in the drafts sent up, the paragraphs are often cancelled and others substituted in their stead, the same as to substance and effect, but differing in their style and construction ....Were the Board to state their reasons at large for these alterations as required by the statute[3] this course of proceeding would give rise to a correspondence between the Board and the Court probably not less voluminous than the correspondence between the Court and the Governments in India.

Interference with letters sent to India

28. SIR THOMAS MUNRO[4] ON ULTIMATE AIM OF BRITISH RULE IN INDIA[5], 1824.

There is one great question to which we should look in all our arrangements : What is to be their final result on the character of the people ? Is it to be raised, or is it to be lowered ? Are we to be satis-

1 This Committee "took cognisance of such of the Company's political affairs which were not of a nature to require secrecy, and also of the arrangement of the home and Eastern establishment." It was one of the twelve major Committees (excluding the Secret Committee) into which the Court of Directors was divided.

2 Pitt's India Act, Clause 12. See C. H. Philips, *The East India Company*, pp. 21-22.

3 Pitt's India Act, Clause 12.

4 Governor of Madras, 1820-1827. See *Life* by Gleig.

5 Minute, December 31, 1824. See K. N. V. Sastri, *The Munro System of British Statesmanship in India.*

fied with merely securing our power and protecting the inhabitants, leaving them to sink gradually in character lower than at present; or are we to endeavour to raise their character, and to render them worthy of filling higher situations in the management of their country, and of devising plans for its improvement? It ought undoubtedly to be our aim to raise the minds of the natives, and to take care that whenever our connection with India might cease, it did not appear that the only fruit of our dominion there had been to leave the people more abject and less able to govern themselves than when we found them........we have had too little experience, and are too little acquainted with the natives, to be able to determine without trial what means would be most likely to facilitate this improvement. Various measures might be suggested.......... but no one appears to me so well calculated to insure success as that of endeavouring to give them a higher opinion of themselves, by placing more confidence in them, by employing them in important situations, and perhaps by rendering them eligible to almost every office under Government. It is not necessary at present to define the exact limit to which their eligibility should be carried, but there seems to be no reason why they should be excluded from any office for which they are qualified, without danger to the preservation of our own ascendancy.

British rule should aim at improving character of Indians.

Indians should be appointed to high offices

Ultimate withdrawal of British control from India

We should look upon India, not as a temporary possession, but as one which is to be maintained permanently, until the natives shall at some future age have abandoned most of their superstitions and prejudices, and become sufficiently enlightened, to frame a regular government for themselves, and to conduct and preserve it. Whenever such a time shall

arrive, it will probably be best for both countries that the British control over India should be gradually withdrawn............if we pursue steadily the proper measures, we shall in time so far improve the character of our Indian subjects as to enable them to govern and protect themselves.

29. SIR THOMAS MUNRO ON EMPLOYMENT OF INDIANS IN PUBLIC SERVICE[1], 1824.

It is strange to observe how many men of very respectable talents have seriously recommended the abolition of native, and the substitution of European, agency to the greatest possible extent. I am persuaded that every advance made in such a plan would not only render the character of the people worse and worse[2], but our Government more and more more inefficient. The preservation of our dominion in this country requires that all the higher offices, civil and military, should be filled with Europeans; but all offices that can be filled with natives without danger to our power might with advantage be left to them. We are arrogant enough to think that we can, with our limited numbers, do the work of a nation. Had we ten times more, we could only do it so much worse. We already occupy every office of importance. Were we to descend to those that are more humble, and are now filled by natives, we should lower our

Abolition of 'native' agency would render people worse and government inefficient.

1 Minute, December 31, 1824.

2 Munro wrote to Canning on June 30, 1821, "Our present system of government, by excluding all natives from power, and trust, and emolument, is much more efficacious in depressing than all our laws and school-books can do in elevating, their character............The improvement of the character of people, and the keeping of them, at the same time, in the lowest state of dependence on foreign rulers to which they can be reduced by conquest, are matters quite incompatible with each other.'

the pursuit of knowledge but the prospect of fame, or wealth, or power? or what is even the use of great attainments if they are not to be devoted to their noblest purpose, the service of the community, by employing those who possess them, according to their respective qualifications, in the various duties of the public administration of the country? How can we expect that the Hindus will be eager in the pursuit of science unless they have the same inducement as in other countries?.......Our books alone will do little or nothing: dry, simple literature will never improve the character of a nation. To produce this effect it must open the road to wealth, and honour, and public employment. Without the prospect of such reward, no attainments in science will ever raise the character of the people.

Diffusion of knowledge, accompanied by exclusion from public offices, cannot improve 'native' character

30. SIR CHARLES METCALFE ON TRAINING OF CIVIL SERVANTS IN INDIA[1], 1828.

In expressing my opinion that the (Fort William) college (at Calcutta) ought to be abolished, as being mischievous with respect to the extravagance which it encourages, and the consequent state of debt and embarrassment which it causes throughout the civil service, and as being unnecessary, and therefore useless for that purpose of instruction which it is professedly designed to accomplish, and consequently entailing a waste of the public resources, it is incumbent on me to state what arrangements I would propose to substitute with a view to the beneficial reception and disposal of young men of the civil service on their arrival in India.

Fort William College 'mischievous' and 'unnecessary.

The young men immediately after their arrival should be subject to an examination, and those who might be found qualified, by knowledge acquired in

1 Minute, December 28, 1828.

Europe, or on their voyage to India, to enter on the public service, should at once be appointed to some employment, with the full allowance attached to it, and sent off by *dawk*, or by some other conveyance, according to the season, to join their respective stations and commence their career of public duty. Those not qualified should nevertheless be sent away from Calcutta to quiet situations in the interior, to be strictly under the orders of public officers of approved character, who would take pleasure in instructing and advising young men under their charge, and would assign to them such employment as would most speedily justify them for the public service, and render them, in the meanwhile, not entirely useless. During this period of tutelage they should receive allowances merely sufficient for their subsistence, and inferior to those attached to any public office ; when reported qualified for the public service by competent examiners, they should be appointed to offices, with the full allowances of servants in employment. The period of service as giving title to subsequent advancement in rank, station, or emolument, should invariably date from the period of qualification.

Training of civil servants who are 'not qualified to enter on the public service'

31. CONSTITUTIONAL POSITION OF THE COURT OF DIRECTORS,[1] 1829.

'Government of checks'

When the Indian Government as constituted (comprehending under that term the established authority in this country as well as in India) is to be characterised by a single word, it might with no impropriety be denominated a Government of checks. Now whatever may be the advantage of checks, delay

1 Court of Directors to Board of Control, August 27, 1829. See C. H. Philips, *The East India Company*, 1784-1834, pp. 265-266.

will generally be in proportion to the number and efficiency of the checks .....In the ordinary course of Indian administration much must always be left to the discretion of the local Governments and unless upon questions of general policy and personal cases it rarely occurs that instructions from hence can reach India before the time for acting upon them is gone by. This is a necessary consequence of the great distance between the two countries, the rapid succession of events in India which are seldom long foreseen even by those who are on the spot, and the importance of the ruling authorities there acting with promptitude and decision and adapting their measures on their own responsibility to the varying emergencies of the hour. These circumstances unavoidably regulate but do not exclude the controlling authority of the Court of Directors. Without defeating the intention of Parliament they point out the best and indeed the only mode in which these intentions can be practically fulfilled. Although, with the exception above adverted to, a specific line of conduct cannot often be prescribed to the Indian Governments, yet it seems to indicate any other rather than a state of irresponsibility that the proceedings of those Governments are reported with fidelity, examined with care, and commented upon with freedom by the Home authorities. Nor can the judgments passed by the Court be deemed useless whilst, though they have immediate reference to past transactions, they serve ultimately as rules for the future guidance of their servants abroad.

Consequential delay

Nature and utility of authority exercised by Court of Directors

32. BENTINCK ON RELATIONS BETWEEN SUPREME AND SUBORDINATE GOVERNMENTS[1], 1831.

The members of the Committee, as well as my

1 Minute, September 14, 1831.

Supreme Government should be relieved of local details.

two colleagues, Mr. Bayley and Sir C. Metcalfe, concur in the opinion that the local details pressing upon the time of the Supreme Government utterly preclude its performance of the higher and more important functions of its office. To this opinion I entirely assent.

The same concurrence of opinion exists as to the necessity of the Supreme Government being divested of all local charge, and that its duties should be confined to a general control of the subordinate presidencies, and that a distinct and a fourth government should be formed for the Upper Provinces.

Of the total inadequacy of a government stationed at Calcutta to control and superintend the administration in the Western Provinces, I have frequently had occasion to remark, and actual investigation has amply confirmed the justness of the opinion.

Nominal control of Supreme Government over subordinate Presidencies

Upon the degree of control which it would be most salutary for the Supreme Government to exercise over the other presidencies, there appears to be no great difference of opinion. Hitherto, this control has been rather nominal than real. It has been confined to general measures of government, to political negotiations, to the making of treaties, to the declaration of war, to great financial arrangements, and latterly, to the confirmation of all regulations.

In the details of the administration of the subordinate presidencies the Supreme Government have no interference. The only knowledge they have of their proceedings is from the copies of their despatches to the Court, and by the published orders of the Government and of the Commander-in-Chief. The Supreme Government have, indeed, the power of issuing orders, if they observe anything in these communications deserving of strong disapprobation. But it would be highly inexpedient to use the power

except in extreme cases, because the act being done, a public revocation of it places the Subordinate Government in some degree of embarrassment and humiliation ; and the measure being under reference to the Court, the Supreme Government may be found in the same objectionable position with respect to its own superiors ; and from the public proclamation of conflicting orders and sentiments much inconvenience must unavoidably arise.

Unjustifiable claim of subordinate Governments for independence

The subordinate Governments naturally enough stickle for their own independence. They objected strongly to their regulations being made subject to the sanction of the Supreme Government, though it seems difficult to understand how legislation, except upon occasions of public danger, or some other pressing emergency, can be otherwise than benefited by additional discussion and deliberation, by more enlarged experience, and by a comparison with the success of remedies applied to the same evils ; and so the Honourable Court in their wisdom have ruled. But in all other proceedings of the administration, what disadvantage could arise from a prompt and immediate check upon any departure from uniformity of system, upon a non-compliance with the orders of the home authorities, an evasion of which is so encouraged and facilitated by the endless delay of repeated references to so distant an authority, and above all, upon lavish expenditure ? In the Military Department instances daily occur of indulgences granted in one army, to which the officers and soldiers of the other, whether European or native, may have an equal right.

* * * * *

It might be assumed from the preceding remarks that I am in favour of a Supreme Government, as recommended by the Committee and my colleagues, whose duties should be exclusively those of general

Wanted—*effective* control of Supreme Government over subordinate Presidencies

control and superintendence. But my concurrence only goes to the expediency of a more effective control in the Supreme Government over the other presidencies, and I consider this to be practicable, without the great change proposed of forming Bengal into two presidencies, to which there are great local and practical objections, and without incurring the great expense that this larger scheme would entail; although I entirely adopt the sentiments of Mr. Bayley that for so great an object as a much improved government of the immense empire, the additional charge, even at the highest scale, is not worth a moment's consideration.

Proposal for creating a separate Government for Upper Provinces disapproved

My first objection is to the separation of the Presidency of Bengal into two separate Governments. It is true that there is a broad line distinguishing the Upper from the Lower Provinces; they are different in climate, in character, and in their political circumstances. They each ought to have within their reach those authorities, revenue and judicial, upon whom their rights and interests so materially depend. But in other respects there is a great mutual connexion between their general interests; one river pervades the whole territory from west to east; one port receives all its produce; Calcutta is the great exchange upon which the commercial and pecuniary transactions of the whole are carried on. For these, and for many other reasons, it would be very inconvenient to divide the control.

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Proposal for transferring capital of Governor-General to Allahabad

With respect then to the Bengal Presid-ncy, all the territories at present constituting it should, in my opinion, be subject, as now, to a Governor-General in Council; but the seat of Government should be placed in the Upper Provinces, the scene of all its most important transactions, revenue, military, and political. No spot presents so many advantages for direct

control, and for ready intercourse with the most distant provinces, and for the despatch of all business, as Allahabad. I annex to this minute a map showing its contiguity to our most important affairs. It is immediately adjacent to Oude, to the Saugur and Nerbudda territories, to Bundelcund ; it has under its eyes the revenue settlements of the Upper Provinces, of such vast importance to the Government and to the people, and which could no longer so shamefully stagnate. Gwalior, Malwa, and Rajputana are all brought within easy means of immediate superintendence, and of personal communication if necessary. A steamer from Allahabad would reach Agra or Delhi on the Jumna, and any place equally distant on the Ganges, in four or five days. At Allahabad, also, the Government may have the advantage of the advice of the Commander-in-Chief in Council, as contemplated by the Legislature, whose head-quarters for the future always ought to be, and I may venture to predict always will be, in the Upper Provinces.

Proposal for administration of Lower Provinces

But to relieve the Supreme Government of the load of details which has hitherto so unworthily occupied its time, it is necessary that a subordinate authority, similar to that of Vice-President in Council, should, under the orders of the Governor-General in Council, reside at the Presidency, superintending the revenue and judicial administration of the Lower Provinces, and of all our territories to the eastward, and conducting all the business at Calcutta. Having now been absent from Calcutta since October, and having reserved to myself a complete cognisance and control over the whole affairs of the Presidency, very much similar to what should be executed by the Governor-General in Council if placed at Allahabad, I am, from this actual experiment, inclined to think that the Supreme Government would be enabled to devote sufficient attention to the general affairs of

the empire without renouncing the direct management of the Bengal Presidency.

Nature of interference by Supreme Government in affairs of subordinate Presidencies

Nor would it seem desirable that a minute interference with the administration of the Subordinate Governments should take place; the interference should be rather of check, of a preventive and restraining, than of an active and meddling character. The Supreme Government should come in aid, and not in supersession of the home authority. It should supply that defect and weakness in the home direction arising from distance, from the delay in the issue of its orders, and from the imperfect knowledge it must possess of the circumstances and true bearings of very many questions. Its business would be to preserve the system as already approved from innovation, to prevent all new expenditure, to prohibit all changes in the various details connected with the military establishment, which are for ever occurring in spite of the Court's orders, and especially so to superintend the general distribution of the troops of all the presidencies, as to make the whole act in unison for the general defence. But it is impossible for the Supreme Government to perform even the least part of these duties without knowing beforehand the intentions of the other Governments; and for its accomplishment it would be necessary to require that all reports of their proceedings, as is the case with all subordinate authorities, should be made direct, and in the first instance, to the Supreme Government, copies being sent for the information of the Honourable Court.

Constitution of Supreme Government

With respect to the constitution of the Supreme Government, it might be either left as it is, or with reference to the whole of India being now subject to British rule, and to the expediency therefore of its being regulated by one uniform system of policy, it might be thought preferable to compose it of the

Governor-General and one councillor from each of the three presidencies. The knowledge and experience of the whole would thus be combined for the general improvement. How much would the revenue settlements of Bengal have been promoted, if by such means the spirit of Sir Thomas Munro's superior management could have been infused, and practically brought to bear upon this branch of our administration?

33. BENTINCK ON THE CIVIL SERVICE,[1] 1831.

[The Select Committee of 1832 condemned the system of training the Company's servants in India and described the college at Fort William as 'a source of more debt than knowledge in the Civil Service" In a Minute dated December 27, 1825, Lord William Bentinck observed that "the average expense of the education of each writer during the last three years was 6,621 rupees or £ 660 per annum; to which must be added a further charge (since most properly discontinued) of 4,000 rupees, or £ 400, to each writer for outfit." He added that even then "there are many who have been in the college for one and two years without passing in any language"] Expenses of Fort William College

While I am of opinion that it would be difficult to form any agency more efficient than that of the Civil Service; and while I deem it necessary that its integrity as a body, and the secure prospect of honour and reward, should be preserved to it; it is impossible, at the same time, to avoid referring to some of the disadvantages belonging to this, in common with all "exclusive orders." In all will be found the same disposition to view with satisfaction things as they are; the same indulgence towards the errors of members of the same community, and the want of that exertion which rivalry and competition alone can excite. But besides these, there is in the mode of Defects of the Civil Service

1 Minute, November 10, 1831.

recruiting the Civil Service by very young men, a cause operating very much to diminish what might otherwise be the greater usefulness of a European agency. These young men come out at too early an age to have acquired any practical experience in any branch of business, science, or knowledge; and therefore, instead of bringing out, as newcomers, the latest improvements of the European civilised world, to be engrafted upon the existing stock, they themselves retrograde, and fall into the opinions and feelings of an age gone by I venture to think that it would be good policy to make furlough a compulsory measure. But this alone would not be sufficient to correct this exclusiveness. To introduce a feeling and council independent altogether of the service, and to add to it the benefit of European experience, combined with matured judgment and acknowledged talents and learning, it would be most useful in my judgment to associate with the judges of the Sudder Courts one or more judges appointed by His Majesty, for the purpose of better superintending and of improving the administration of justice and of the police. It is essential that this infusion of a different agency should not be so extensive as to interfere with the integrity of the service, and with its just and fair prospects.

Defects of appointing very young men to the Civil Service

Suggestions for removing defects

* * * * *

The result of all my investigation into the system of our administration has been a conviction that its main defect consists in the absence of all official subordination, in the equality existing between all ranks, and in the individuality, if I may so say, of every public functionary. The recommendation that I would most strongly urge on the Honourable Court is, that they would continue and persevere in the system long since recommended to them by the Madras Government, upon the authority of Sir Thomas

Munro, of uniting the appointments of collector and magistrate, of destroying the independence of each other of every officer employed in the same district, of making the collector's a great office, consisting of deputy collectors and joint magistrates and assistants, subordinate to one head, and acting upon the same system. The public will then be saved from the evils of a continually recurring interregnum, from the succession of perfect strangers to all the concerns of the district, and from the undue advantages which all such occasions of the virtual suspension of authority give to a corrupt *omlah*[1]. This arrangement gives also to the Government an opportunity of providing a counterbalance to the inefficiency of a chief, by aiding him with subordinates of superior qualification, and by placing under the correction of a strong superior the idle and the weak. It is in a school of this kind that young men will best be trained. A profound knowledge of jurisprudence, or the high attainments which distinguish English lawyers and judges, are not to be looked for; nor, however desirable, are they indispensable; but what is necessary is that those both young and old, who have the decision of suits, whether for 10 or 1000 rupees, and who are vested with the power of fine, imprisonment, and corporal punishment, should have served their apprenticeship; should be conversant with the manners and business of the country: and that their opinions should be formed upon the practice and greater experience of their superiors in office.

Proposal for uniting the offices of Collector and Magistrate

Merits of the proposal

Proper training for judicial officers

34. JAMES MILL ON THE ANOMALIES OF THE SUPREME COURT,[2] 1832.

[The Supreme Court exercised criminal jurisdiction over *all* inhabitants of the Presidency town, whether European or Indian, and over *all* Europeans wherever they might live. For

1 Clerk.

2 Evidence before Select Committee of 1832.

instance, a European living in the *mufassil*, if he brought a suit against an Indian, would do so in the Supreme Court, and an Indian residing in the *mufassil* and having a complaint against a European living there might be compelled to bring his suit to the Supreme Court. The unfairness and complexity of this anomalous procedure led to many troubles.[1]]

The anomaly of the case in India at present consists in the extraordinary circumstances of there being a class of people in the country, a class in reality of foreigners, not very considerable in point of numbers, but remarkable in certain circumstances, and from the power attendant on those circumstances, who are not subject to the legislative power of the Government under which they live; who claim exemption from its enactments, and for whom the Government has no power of making laws. I allude to the Englishmen who are in India. Our habit of looking with indifference upon things which we have long seen the same, prevents us from observing the extraordinary nature of this case; by putting something of a parallel case it may be more easily understood. If we were to suppose that there were a class of foreigners in this country, in England, to bind whom by laws the King or Parliament had no power; foreigners spreading themselves in all directions among the people of the country, but exempt from the jurisdiction of our tribunals, and claiming to own no obedience but to a single court belonging to their own Sovereign, whom they speak of and represent as far superior to ours; further, if we were to suppose that this single court of theirs was seated in the metropolis, so that Englishmen could have no redress for any injury sustained at the hands of these foreigners, except by coming up to the metropolis to sue them in their own court; that those foreigners, moreover,

Europeans not subject to legislative authority of Government

Anomaly illustrated

1 See Dharker, *Lord Macaulay's Legislative Minutes*, pp. 47-64, 168-197.

from their peculiar circumstances, carry with them such power that the subjects of the King of England are in perpetual dread of them, afraid of applying for redress against anything they do; and if to the above supposition we were to add that this same court of their sovereign, not ours, placed in our metropolis, should exclusively have power of administering justice to the whole of the inhabitants of our metropolis; that the inhabitants of our metropolis have no access to justice but through this single court; while the Government itself, King and Parliament, should have no power of making any laws to bind the inhabitants of the metropolis, but according to the pleasure of those same foreign judges; this would be a parallel to the case as it now stands in India, and seems to me to require no words to prove its incompatibility with good government. I can hardly anticipate contradiction to the opinion of both the Supreme Government and the judges of the Supreme Court, that there cannot be good government in India till one uniform system of law is made to include all the subjects of that Government, this portion as well as every other.

Present system incompatible with good government

35. TRAINING OF CIVIL SERVANTS AT HAILEYBURY,[1] 1832.

[The Haileybury College was established in 1806 'for the purpose of affording to civil servants instruction in those branches of education which were most likely to be useful in their official career in India'. Every student had to keep four terms at the college, and the age limit was fixed at 22 years. The exclusiveness of the college and the narrowness of its training provoked criticism.[2]]

The collection of a number of young men of the same age, and destined for the same scene, in the

1 Evidence of John Sullivan of the Madras Civil Service before Select Committee of 1832.

2 See A. K. Ghosal. *Civil Service in India*, Chapter VII.

Isolation of civil servants at Haileybury

same college, has always appeared to be a capital mistake in the existing plan of education. It deprives young men of the opportunity of forming a general acquaintance with the men who are hereafter to figure upon the public stage in this country. To rivet the affections of those who go early in life to India to persons and things in England should always, I imagine, be a main object of their education. To have belonged to one of the national universities is itself considered an honour ; and to have participated in the honours and rewards which emanate from these establishments is a privilege which is always, highly valued. The academical honours of Haileybury are not, I imagine, much valued. The young men who go there from school are by the rules of the college cut off from all society except what is to be found within the walls of the college until they embark for India ; they are in consequence almost strangers in India, and upon their arrival in India they again associate almost exclusively with those who were their fellow-collegians at Haileybury.

Civil servants should be educated in British Universities.

A set of young men educated at the different national universities would meet in India for the first time under more favourable auspices ; there would be among them a greater variety of ideas, more incentives to emulation and, what is of higher consequence, more effectual checks upon extravagance and misconduct, because the discipline of the regular universities is, and from their composition always must be, more perfect than at Haileybury. The association of the younger undergraduates at Oxford and Cambridge with their seniors, and with the various classes which compose their societies, cannot but operate more beneficially upon the minds of juniors. At Haileybury all are young, younger most of them than the junior undergraduates at the universities. Mischief is the consequence of this congregation of youths, for

Indiscipline at Haileybury

it seems to be pretty generally admitted that at no public seminary in England is discipline so completely relaxed as at the East India College.

Habits of extravagance fostered at Haileybur

There seems to be almost a natural association in the minds of the Englishmen between India and wealth. This notion is naturally fostered at Haileybury; habits of extravagance are in consequence contracted there which cling to the young men throughout their Indian career, to their own detriment and that of the Government whose servants they are.

36. CHARTER ACT[1], 1833.

China trade

[As early as 1829, the question of the renewal of the Company's Charter had been broached in Parliament, and in 1830 Select Committees of both Houses were appointed to investigate "the affairs of the Company and the trade between Great Britain and China." This investigation was interrupted by the dissolution of Parliament and the change of Ministry. After further interruptions the Committee was constituted for the fourth time in January, 1832. "Two great questions had to be determined, namely, the continuance or cessation of the Company's exclusive privilege of trade with China, and of the Company's administration of British India." As early as 1825, the Directors had recognized the certainty of the loss of Company's exclusive trade with China[2]. In 1830 Charles Grant, President of the Board of Control in Lord Grey's Ministry, informed the Directors that the "China monopoly was to cease." The Cabinet decided to leave the administration of India to the Company—"a decision so much the more quickly and easily reached because thereby the East India patronage was left with the Directors and a potential cause of troublesome debate in Parliament perhaps avoided." The Company did not resist the proposals of the Government; it was a "species of slow suicide." Grant introduced the Bill into Parliament in June, 1833; soon afterwards he fell ill, and Macaulay, then Secretary to the Board of Control, took over

1 3 and 4 Will. IV, C. 85

2 See N. C. Sinha, ***Studies in Indo-British Economy Hundred Years Ago***, Chapter I.

the proceedings. Parliament showed little interest in the Bill. The attendance in the House of Commons rarely exceeded 150 members, and clause after clause was passed without adequate discussion. 1]

1. Extracts from Act.

An Act for effecting an arrangement with the East India Company, and for the better government of His Majesty's Indian territories, till the 30th day of April, 1854.

* * * *

3. Provided always, and be it enacted, that from and after the said 22nd day of April, 1834, the exclusive right of trading with the Dominions of the Emperor of China, and of trading in tea, continued to the said Company by the said Act of the 53rd year of King George the Third, shall cease.

Company deprived of monopoly of China trade and trade in tea

4. And be it enacted, that the said Company shall, with all convenient speed after the said 22nd day of April, 1834, close their commercial business.

* * * *

King may appoint Commissioners for the affairs of India.

19. And be it enacted, that it shall and may be lawful for His Majesty by any Letters Patent or by any Commission or Commissions to be issued under the great seal of Great Britain from time to time to nominate, constitute, and appoint, during pleasure, such persons as His Majesty shall think fit to be, and who shall accordingly be and be styled Commissioners for the affairs of India; and every Enactment, Provision, Matter, and Thing relating to the Commissioners for the affairs of India in any other Act or Acts contained, so far as the same are in force and not repealed by or repugnant to this Act, shall be deemed and taken to be applicable to the Commissioners to be nominated as aforesaid.

20. And be it enacted, that the Lord President of the Council, the Lord Privy Seal, the First Lord

1. See C. H. Philips, *The East India Company*, pp. 287-294.

of the Treasury, the Principal Secretaries of State, the Chancellor of the Exchequer for the time being shall, by virtue of their respective offices, be and they are hereby declared to be Commissioners for the Affairs of India, in conjunction with the persons to be nominated in any such Commission as aforesaid, and they shall have the same Powers respectively as if they had been expressly nominated in such Commission, in the Order in which they are herein mentioned, next after the Commissioner first named therein.

Ex-officio Commissioners

21. And be it enacted, that any Two or more of the said Commissioners shall and may form a Board for executing the several Powers which, by this Act, or by any other Act or Acts, are or shall be given to or vested in the Commissioners for the Affairs of India; and that the Commissioner first named in any such Letters Patent or Commission, for the Time being, shall be the President of the said Board; and that when any Board shall be formed in the Absence of the President, the Commissioner next in order of nomination in this Act or in the said Commission, of those who shall be present, shall for that Turn preside at the said Board.

President of the Board

22. And be it enacted, that if the Commissioners present at any Board shall be equally divided in Opinion with respect to any matter by them discussed, then and on every such occasion the President, or in his Absence the Commissioner acting as such, shall have Two Voices or the casting vote.

President to have casting vote

* * * *

25. And be it enacted, that the said Board shall have and be invested with full Power and Authority to superintend, direct, and control all Acts, Operations, and Concerns of the said Company which in anywise relate to or concern the Government or Revenues of the said Territories, or the Property

Board to control all acts concerning India

hereby vested in the said Company in Trust as aforesaid, and all Grants of Salaries, Gratuities, and Allowances, and all other Payments and Charges whatever, out of or upon the said Revenues and Property respectively, except as hereinafter is mentioned.

* * * *

Secret Committee

35. And be it enacted, that the said Court of Directors shall from Time to Time appoint a Secret Committee, to consist of any Number not exceeding Three of the said Directors, for the particular purposes in this Act specified; which said Directors so appointed shall, before they or any of them shall act in the Execution of the Powers and Trusts hereby reposed in them, take an Oath of the Tenor following; (that is to say), "I (A.B.) do swear, That I will, according to the best of my Skill and Judgment, faithfully execute the several Trusts and powers reposed in me as a Member of the Secret Committee appointed by the Court of Directors of the India Company; I will not disclose or make known any of the secret orders, Instructions, Dispatches, Official Letters or Communications which shall be sent or given to me by the Commissioners for the Affairs of India, save only to the other Members of the said Secret Committee, or to the Person or Persons who shall be duly nominated and employed in transcribing or preparing the same respectively, unless I shall be authorized by the said Commissioners to disclose and make known the same. So help me God."................

Oath to be taken by members of Secret Committee

36. Provided also, and be it enacted, that if the said Board shall be of opinion that the Subject-Matter of any of their Deliberations concerning the levying War or making Peace, or treating or negotiating with any of the Native Princes or States in India, or with any other Princes or States, or touching the Policy to be observed with respect to such Princes or States,

intended to be communicated in Orders, Dispatches, Official Letters or Communications, to any of the Governments or Presidencies in India, or to any Officers or Servants of the said Company shall be of a nature to require Secrecy, it shall and may be lawful for the said Board to send their Orders, Dispatches, Official Letters or Communications, to the Secret Committee of the said Court of Directors to be appointed as is by this Act directed, who shall thereupon, without disclosing the same, transmit the same according to the Tenor thereof, or pursuant to the Directions of the said Board, to the respective Governments and Presidencies, Officers and Servants; and that the said Governments and Presidencies, Officers and Servants shall be bound to pay a faithful Obedience thereto, in like Manner as if such Orders, Dispatches, Official Letters or Communications had been sent to them by the said Court of Directors.

Procedure to be adopted by the Board for sending secret communications to India

* * * *

38. And be it enacted, that the Territories now subject to the Government of the Presidency of Fort William in Bengal shall be divided into Two distinct Presidencies, one of such Presidencies, in which shall be included Fort William aforesaid, to be styled the Presidency of Fort William in Bengal, and the other of such Presidencies to be styled the Presidency of Agra[1]; and that it shall be lawful for the said Court of Directors, under the control by this Act provided, and they are hereby required, to declare and appoint what Part or Parts of any of the Territories under the Government of the said Company shall from Time to Time be subject to the Government of each of the several Presidencies now subsisting or to be established as aforesaid, and from Time to Time,

Creation of two Presidencies: Fort William and Agra

1 The arrangement proposed here was postponed by an Act of 1835, which provided for the appointment of a Lieutenant-Governor of the North-West Provinces.

as Occasion may require, to revoke and alter, in the whole or in part, such Appointment, and such new Distribution of the same as shall be deemed expedient.

Governor-General of *India*

39. And be it enacted, that the Superintendence, Direction, and Control of the whole Civil and Military Government of all the said Territories and Revenues in India shall be and is hereby vested in a Governor-General and Counsellors, to be styled "The Governor-General of India in Council."[1]

Ordinary Members of Council

40. And be it enacted, that there shall be Four Ordinary Members of the said Council, Three of whom shall from Time to Time be appointed by the said Court of Directors from amongst such Persons as shall be or shall have been Servants of the said Company; and each of the said Three Ordinary Members of Council shall at the Time of his appointment have been in the service of the said Company for at least Ten Years; and if he shall be in the Military Service of the said Company, shall not during his Continuance in Office as a Member of Council hold any Military Command, or be employed in actual Military Duties; and that the Fourth Ordinary Member of Council shall from Time to Time be appointed from amongst Persons who shall not be Servants of the said Company by the said Court of Directors, subject to the Approbation of His Majesty, to be signified in Writing by his Royal Sign Manual, countersigned by the President of the said Board; provided that such last mentioned Member of Council shall not be entitled to sit or vote in the said Council except at Meetings thereof for making Laws and Regulations; and it shall be lawful for the said Court of Directors to appoint the Commander-in-Chief of the Company's Forces in India, and if there shall be no such Com-

Law Member

1. See Bisheshwar Prasad, *The Origins of Provincial Autonomy*, Chapter I.

mander-in-Chief, or the Offices of such Commander-in-Chief and of Governor-General of India shall be vested in the same Person, then the Commander-in-Chief of the Forces on the Bengal Establishment to be an Extraordinary Member of the said Council, and such Extraordinary Member of Council shall have Rank and Precedence at the Council Board next after the Governor-General.

Commander-in-Chief as Member of Council

41. And be it enacted, that the Person who shall be Governor-General of the Presidency of Fort William in Bengal on the Twenty-second Day of April one thousand eight hundred and thirty-four shall be the First Governor-General of India under this Act, and such Persons as shall be Members of Council of the same Presidency on that Day shall be respectively Members of the Council constituted by this Act.

Appointment of Governor-General

42. And be it enacted, that all vacancies happening in the office of Governor-General of India shall from Time to Time be filled up by the said Court of Directors, subject to the Approbation of His Majesty, to be signified in writing by his Royal Sign Manual, countersigned by the President of the said Board.

Provision for law-making by Governor-General in Council

43. And be it enacted, that the said Governor-General in Council shall have Power to make Laws and Regulations for repealing, amending, or altering any Laws or Regulations whatever now in force or hereafter to be in force in the said Territories or any Part thereof, and to make Laws and Regulations for all Persons, whether British or Native, Foreigners or others, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the Jurisdictions thereof, and for all Places and Things whatever within and throughout the whole and every Part of the said Territories, and for all Ser-

vants of the said Company within the Dominions of Princes and States in alliance with the said Company; save and except that the said Governor-General in Council shall not have the power of making any Laws or Regulations which shall in any way repeal, vary, suspend, or affect any of the Provisions of this Act, or any of the Provisions of the Acts for punishing Mutiny and Desertion of Officers and Soldiers, whether in the Service of His Majesty or the said Company, or any Provisions of any Act hereafter to be passed in any wise affecting the said Company or the said Territories or the Inhabitants thereof, or any Laws or Regulations which shall in any way affect any Prerogative of the Crown, or the Authority of Parliament, or the constitution or Rights of the said Company, or any Part of the unwritten Laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any Degree the Allegiance of any Person to the Crown of the United Kingdom, or the Sovereignty or Dominion of the said Crown over any Part of the said Territories.

Restrictions on the law-making power of Governor-General in Council

44. Provided always, and be it enacted, that in case the said Court of Directors, under such Control as by this Act is provided, shall signify to the said Governor-General in Council their Disallowance of any Laws or Regulations by the said Governor-General in Council made, then and in every such Case, upon Receipt by the said Governor-General in Council of Notice of such Disallowance, the said Governor-General in Council shall forthwith repeal all Laws and Regulations so disallowed.

Power of Court of Directors to disallow laws made by Governor-General in Council

45. Provided also, and be it enacted, that all Laws and Regulations made as aforesaid, so long as they shall remain unrepealed, shall be of the same Force and Effect within and throughout the said Territories as any Act of Parliament would or ought

to be within the same territories, and shall be taken notice of by all Courts of Justice whatsoever within the same Territories, in the same Manner as any Public Act of Parliament would and ought to be taken notice of; and it shall not be necessary to register or publish in any Court of Justice any Laws or Regulations made by the said Governor-General in Council.

Laws made by Governor-General in Council to have same force as Acts of Parliament and need not be registered by any Court

46. Provided also, and be it enacted, that it shall not be lawful for the said Governor-General in Council, without the previous sanction of the said Court of Directors, to make any Law or Regulation whereby Power shall be given to any Courts of Justice, other than the Courts of Justice established by His Majesty's Charters, to sentence to the Punishment of Death any of His Majesty's natural-born Subjects born in Europe, or the Children of such Subjects, or which shall abolish any of the Courts of Justice established by His Majesty's Charters.

Restrictions on law-making power of Governor-General in Council

47. And be it enacted, that the said Court of Directors shall forthwith submit, for the Approbation of the said Board, such Rules as they shall deem expedient for the Procedure of the Governor-General in Council in the Discharge and Exercise of all Powers, Functions, and Duties imposed on or vested in him by virtue of this Act, or to be imposed or vested in him by any other Act or Acts; which Rules shall prescribe the Modes of Promulgation of any Laws or Regulations to be made by the said Governor-General in Council, and of the Authentication of all Acts and Proceedings whatsoever of the said Governor-General in Council; and such Rules, when approved by the said Board of Commissioners, shall be of the same Force as if they had been inserted in this Act: Provided always, that such Rules shall be laid before both Houses of Parliament in the Session next after the Approval thereof.

Rules regarding procedure of Governor-General in Council

Procedure of law-making by Governor-General in Council

48. Provided always, and be it enacted, that all Laws and Regulations shall be made at some Meeting of the Council at which the said Governor-General and at least Three of the Ordinary Members of Council shall be assembled, and that all other Functions of the said Governor-General in Council may be exercised by the said Governor-General and One or more Ordinary Member or Members of Council, and that in every Case of Difference of Opinion at Meetings of the said Council where there shall be an Equality of Voices the said Governor-General shall have Two Votes or the casting Vote.

Differences between Governor-General and Council

49. Provided always, and be it enacted, that when and so often as any Measure shall be proposed before the said Governor-General in Council, whereby the safety, Tranquillity or Interests of the British Possessions in India, or any Part thereof, are or may be, in the Judgement of the said Governor-General, essentially affected and the said Governor-General shall be of opinion either that the Measure so proposed ought to be adopted or carried into execution, or that the same ought to be suspended or wholly rejected, and the Majority in Council then present shall differ in and dissent from such Opinion, the said Governor-General and Members of Council are hereby directed forthwith mutually to exchange with and communicate to each other in writing under their respective Hands, to be recorded at large on their Secret Consultations, the Grounds and Reasons of their respective Opinions: and if after considering the same the said Governor-General and the Majority in Council shall still differ in Opinion, it shall be lawful for the said Governor-General, of his own Authority and on his own Responsibility, to suspend or reject the Measure so proposed in part or in whole, or to adopt and carry any Measure so proposed into Execution, as the said Governor-General shall think fit and expedient.

Governor-General's power to override Council

50. And be it enacted, that the said Council shall from Time to Time assemble at such Place or Places as shall be appointed by the said Governor-General in Council within the said Territories, and that as often as the said Council shall assemble within any of the Presidencies of Fort St. George, Bombay, or Agra, the Governor of such Presidency shall act as an Extraordinary Member of Council.

Governors of Presidencies to act as extraordinary Members of Council

51. Provided always, and be it enacted, that nothing herein contained shall extend to affect in any way the Right of Parliament to make Laws for the said Territories and for all the Inhabitants thereof; and it is expressly declared that a full, complete, and constantly existing Right and Power is intended to be reserved to Parliament to control, supersede, or prevent all Proceedings and Acts whatsoever of the said Governor-General in Council, and to repeal and alter at any Time any Law or Regulation whatsoever made by the said Governor-General in Council, and in all respects to legislate for the said Territories and all the inhabitants thereof in as full and ample a Manner as if this Act had not been passed: and the better to enable Parliament to exercise at all Times such Right and Power, all Laws and Regulations made by the said Governor-General in Council shall be transmitted to England, and laid before both Houses of Parliament, in the same Manner as is now by Law Provided concerning the Rules and Regulations made by the several Governments in India.

Right of Parliament reserved

52. And be it enacted, that all Enactments, Provisions, Matters, and Things relating to the Governor-General of Fort William in Bengal in Council, and the Governor-General of Fort William in Bengal alone, respectively, in any other Act or Acts contained, so far as the same are now in force, and not repealed by or repugnant to the Provisions of this Act, shall continue and be in force and be applicable

All previous enactments regarding Supreme Government to remain in force, unless repealed by or repugnant to this Act

to the Governor-General of India in Council, and to the Governor-General of India alone, respectively.

* * * *

Government of Presidencies

56. And be it enacted, that the Executive Government of each of the several Presidencies of Fort William in Bengal, Fort Saint George, Bombay, and Agra shall be administered by a Governor and Three Councillors, to be styled "The Governor in Council of the said Presidencies for Fort William in Bengal, Fort Saint George, Bombay, and Agra", respectively: and the said Governor and Councillors respectively of each such Presidency shall have the same Rights and Voices in their Assemblies, and shall observe the same Order and Course in their Proceedings, as the Governors in Council of the Presidencies of Fort Saint George and Bombay now have and observe, and that the Governor-General of India for the Time being shall be Governor of the Presidency of Fort William in Bengal.[1]

Governor-General to remain Governor of Bengal

1 The following remarks of Sir George Campbell (*Memoirs of My Indian Career*. Vol. I, pp. 228-299) may be noted:

"While the Governor-General in Council was the Governor-General of Bengal, and the Central Government resident in Calcutta directly administered the Bengal territories, those territories had the attention of a strong Government in theory at least; they were recognised as a most important charge both of the Governor-General himself and of the Members of his Council.

.........But when in 1834 the Governor-General and his Council became Governor-General of India in Council, and the Governor-General became Governor of Bengal without a Council, a great change in Bengal administration took place. Lord William Bentinck probably never lost his interest in Bengal, but in Lord Auckland's time more distant politics wholly engaged the attention of the Government of India. In the days of his successors new kingdoms came rapidly under British sway and engaged more immediate attention. The Governors-General were constantly absent in the Upper Pro

57. Provided always, and be it enacted, that it shall and may be lawful for the said Court of Directors, under such Control as is by this Act provided, to revoke and suspend, so often and for such Periods as the said Court shall in that behalf direct, the Appointment of Councils in all or any of the said Presidencies, or to reduce the Number of Councillors in all or any of the said Councils, and during such Time as a Council shall not be appointed in any such Presidency the Executive Government thereof shall be administered by a Governor alone.

Special provision about Council

58. And be it enacted, that the several Persons who on the said Twenty-Second Day of April, One thousand eight hundred and thirty-four shall be Governors of the respective Presidencies of Fort Saint George and Bombay, shall be the first Governors of the said Presidencies respectively under this Act; and that the Office of Governor of the said Presidency of Agra, and all vacancies happening in the Offices of the Governors of the said Presidencies respectively, shall be filled up by the said Court of Directors, subject to the Approbation of His Majesty, to be signified under his Royal Sign Manual, countersigned by the said President of the said Board of Commissioners.

Appointment of Presidency Governors

59. And be it enacted, that in the Presidencies in which the Appoinment of a Council shall be suspended under the Provision hereinbefore contained, and during such Time as Councils shall not be appointed therein respectively, the Governors appoint-

vinces for years together, and the government of Bengal was generally entrusted to the Senior Member of Council, sometimes an experienced civil administrator, sometimes a military officer entirely without such experience; but always in an uncertain and casual and temporary sorr of way. The Govern-nor-General sometimes took charge, and a strong man made a strong will felt; but it was totally impossible that he could master or attend to the details of an administration very widely different from those with which he was brought more immediately in contact. Under this system the real administration in detail was very much left to two important bodies —the Sudder Court superintended judicial affairs, and the Board of Revenue obtained a much larger authority in revenue matters than in other parts of India."

Neglect of Bengal administration

ed under this Act, and in the Presidencies in which Councils shall from Time to Time be appointed the said Governors in their respective Councils, shall have all the Rights, Powers, Duties, Functions, and Immunities whatsoever, not in anywise repugnant to this Act, which the Governors of Fort Saint George and Bombay in their respective Councils now have within their respective Presidencies; and that the Governors and Members of Council of Presidencies appointed by or under this Act shall severally have all the Rights, Powers, and Immunities respectively, not in any wise repugnant to this Act, which the Governors and Members of Council of the Presidencies of Fort Saint George and Bombay respectively now have in their respective Presidencies; provided that no Governor or Governor in Council shall have the Power of Making or suspending any Regulations or Laws in any case whatever, unless in cases of urgent Necessity (the Burthen of the Proof whereof shall be on such Governor or Governor in Council) and then only until the Decision of the Governor-General of India in Council shall be signified thereon; and provided also, that no Governor or Governor in Council shall have the power of creating any new Office, or granting any salary, Gratuity, or Allowance, without the previous Sanction of the Governor-General of India in Council.

Powers of Presidency Governors

Control of Governor-General in Council over Presidency Governors

60. Provided always, and be it enacted, that when and so often as the said Court of Directors shall neglect for the Space of Two Calendar Months, to be computed from the Day whereon the Notification of the Vacancy of any office or Employment in India in the Appointment of the said Court shall have been received by the said Court, to supply such Vacancy, then and in every such Case it shall be lawful for His Majesty to appoint, by Writing under his Sign manual, such Person as His Majesty shall think

King's right to fill up vacancies

proper to supply such Vacancy; and that every Person so appointed shall have the same Powers, Privileges, and Authorities as if he or they had been appointed by the said Court, and shall not be subject to Removal or Dismissal without the Approbation and Consent of His Majesty.

61. And be it enacted, that it shall be lawful for the said Court of Directors to appoint any person or Persons Provisionally to succeed to any of the Offices aforesaid, for supplying any Vacancy or Vacancies therein, when the same shall happen by the Death or Resignation of the Person or Persons holding the same office or offices respectively, or on his or their Departure from India with Intent to return to Europe, or on any Event or Contingency expressed in any such provisional Appointment or Appointments to the same respectively, and such Appointments again to revoke, provided that every provisional Appointment to the several offices of Governor-General of India, Governor of a Presidency, and the Member of Council of India, by this Act directed to be appointed from amongst Persons who shall not be servants of the said Company, shall be subject to the Approbation of His Majesty, to be signified as aforesaid, but that no Person so appointed to succeed provisionally to any of the said Offices shall be entitled to any Authority, Salary or Emolument appertaining thereto until he shall be in the actual Possession of such Office.

Provisional appointments

62. And be it enacted, that if any vacancy shall happen in the office of Governor-General of India when no provisional or other successor shall be upon the spot to supply such vacancy, then and in every such case the ordinary Member of Council next in rank to the said Governor-General shall hold and execute the said office of Governor-General of India and Governor of the Presidency of Fort William in

Acting Governor-General

Bengal until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and that every such acting Governor-General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of Governor-General of India, and shall be entitled to receive the Emoluments and advantages appertaining to the office by him supplied, such acting Governor-General foregoing his salary and allowance of a member of Council for the same period.

Acting Presidency Governor

63. And be it enacted, that if any vacancy shall happen in the office of Governor of Fort Saint George, Bombay, or Agra, when no provisional or other successor shall be upon the spot to supply such vacancy then and in every such case, if there shall be a Council in the Presidency in which such vacancy shall happen, the member of such Council, who shall be next in rank to the Governor, other than the Commander-in-Chief or officer commanding the forces of such Presidency, and if there shall be no Council, then the Secretary of Government of the said Presidency who shall be senior in the said Office of Secretary, shall hold and execute the said Office of Governor until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and that every such acting Governor shall, during the time of his continuing to act as such, receive and be entitled to the Emoluments and advantages appertaining to the office by him supplied, such acting Governor foregoing all salaries and allowances by him held and enjoyed at the time of his being called to supply such office.

Acting Member of Council of India

64. And be it enacted, that if any vacancy shall happen in the office of an ordinary member of Council of India when no person provisionally or otherwise appointed to succeed thereto shall be then present on the spot, then and on every such occasion

such vacancy shall be supplied by the appointment of the Governor-General in council; and if any vacancy shall happen in the Office of a Member of Council of any Presidency when no person provisionally or otherwise appointed to succeed thereto shall be then present on the spot, then and on every such occasion such Vacancy shall be supplied by the appointment of the Governor in Council of the Presidency in which such vacancy shall happen, and until a Successor shall arrive the Person so nominated shall execute the office by him supplied, and shall have all the powers thereof, and shall have and be entitled to the salary and other Emoluments and Advantages appertaining to the said Office during his continuance therein, every such temporary Member of Council foregoing all Salaries and Allowances by him held and enjoyed at the time of his being appointed to such office: provided always, that no person shall be appointed a temporary Member of Council who might not have been appointed by the said Court of Directors to fill the vacancy supplied by such temporary appointment.

Acting Member of Presidency Council

65. And be it further enacted, that the said Governor-General in Council shall have and be invested by virtue of this Act with full Power and Authority to superintend and control the Governors and Governors in Council of Fort William in Bengal, Fort Saint George, Bombay, and Agra, in all Points relating to the Civil or Military Administration of the said Presidencies respectively, and the said Governors and Governors in Council shall be bound to obey such orders and Instructions of the said Governor-General in Council in all Cases whatsoever.

Control of Governor-General in Council over Presidency Governors in Council

66. And be it enacted, that it shall and may be lawful for the Governors or Governors in Council of

Right of Presidency Governors to suggest draft laws to Governor-General in Council

Fort William in Bengal, Fort Saint George, Bombay, and Agra respectively, to propose to the said Governor-General in Council Drafts or Projects of any Laws or Regulations which the said Governors or Governors in Council respectively may think expedient, together with their Reasons for proposing the same; and the said Governor-General in Council is hereby required to take the same and such Reasons into consideration, and to communicate the Resolutions of the said Governor-General in Council thereon, to the Governor or Governor in Council by whom the same shall have been proposed.

67. And be it enacted, that when the said Governor-General shall visit any of the Presidencies of Fort Saint George, Bombay, or Agra, the Powers of the Governors of those Presidencies respectively shall not by reason of such visit be suspended.

Presidency Governors to submit important papers to Governor-General in Council

68. And be it enacted, that the said Governors and Governors in Council of the said Presidencies of Fort William in Bengal, Fort Saint George, Bombay, and Agra respectively shall and they are hereby respectively required regularly to transmit to the said Governor-General in Council true and exact copies of all such Orders and Acts of their respective Governments, and also Advice and Intelligence of all Transactions and Matters which shall have come to their Knowledge, and which they shall deem material to be communicated to the said Governor-General in Council as aforesaid, or as the said Governor-General in Council shall from Time to Time require.

Deputy Governor of Bengal

69. And be it enacted, that it shall be lawful for the said Governor-General in Council, as often as the Exigencies of the Public Service may appear to him to require, to appoint such one of the Ordinary Members of the said Council of India as he may think fit to be Deputy Governor of the Presidency of Fort William in Bengal, and such Deputy Governor

shall be invested with all the Powers and perform all the Duties of the said Governor of the Presidency of Fort William in Bengal, but shall receive no additional Salary by reason of such Appointment.

70. And be it enacted, that whenever the said Governor-General in Council shall declare that it is expedient that the said Governor-General should visit any part of India unaccompanied by any member or members of the Council of India, it shall be lawful for the said Governor-General in Council, previously to the Departure of the said Governor-General, to nominate some Member of the Council of India to be President of the Council, in whom during the Absence of the said Governor-General from the said Presidency of Fort William in Bengal, the Powers of the said Governor General in Assemblies of the said Council shall be reposed ; and it shall be lawful in every such Case for the said Governor-General in Council, by a Law or Regulation for that Purpose to be made, to authorize the Governor-General alone to exercise all or any of the Powers which might be exercised by the said Governor-General in Council except the Power of making Laws or Regulations ; provided always, that during the Absence of the Governor-General no Law or Regulation shall be made by the said President and Council without the Assent in Writing of the said Governor-General.

Provision for Governor General's absence from capital unaccompanied by Council

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74. And be it enacted, that it shall be lawful for His Majesty, by Writing under His Sign Manual, countersigned by the President of the said Board of Commissioners, to remove or dismiss any person holding any Office, Employment or Commission, Civil or Military, under the said Company in India, and to vacate any Appointment or Commission of

King's power to dismiss Company's servants

any Person to any such Office or Employment provided that a Copy of every such writing, attested by the said President, shall within Eight Days after the same be signed by His Majesty be transmitted or delivered to the Chairman or Deputy Chairman of the said Company.

Power of Court of Directors to dismiss Company's servants

75. Provided always, and be it enacted, that nothing in this Act contained shall take away the Power of the said Court of Directors to remove or dismiss any of the Officers or Servants of the said Company, but that the said Court shall and may at all Times have full Liberty to remove or dismiss any of such Officers or Servants at their Will and Pleasure; provided that any Servant of the said Company appointed by His Majesty through the Default of Appointment by the said Court of Directors shall not be dismissed or removed without His Majesty's Approbation, as hereinbefore is mentioned.

Salaries

76. And be it enacted, that there shall be paid to the several Officers hereinafter named the several Salaries set against the Names of such Officers, subject to such Reduction of the said several Salaries respectively as the said Court of Directors, with the Sanction of the said Board, may at any Time think fit: (that is to say,)

To the Governor-General of India, Two hundred and Forty thousand Sicca Rupees:

To each Ordinary Member of the Council of India, Ninety-six thousand Sicca Rupees:

To each Governor of the Presidencies of Fort Saint George, Bombay, and Agra, One hundred and twenty thousand Sicca Rupees:

To each Member of any Council to be appointed in any Presidency, Sixty thousand Sicca Rupees:

And the Salaries of the said Officers respectively

shall commence from their respectively taking upon them the Execution of their respective Offices, and the said salaries shall be the whole Profit or Advantage which the said Officers shall enjoy during their Continuance in such Offices respectively ; and it shall be and it is hereby declared to be a Misdemeanor for any such Officer to accept for his own Use, in the Discharge of his Office, any Present, Gift, Donation, Gratuity, or Reward, pecuniary or otherwise whatsoever, or to trade or traffic for his own Benefit or for the Benefit of any other person or persons whatsoever ; and the said Court of Directors are hereby required to pay to all and singular the Officers and persons hereinafter named who shall be resident in the United Kingdom at the Time of their respective Appointments, for the Purpose of defraying the Expenses of their Equipment and Voyage, such Sums of Money as are set against the Names of such Officers and Persons respectively ; (that is to say,)

Company's servants forbidden to take presents, gifts, etc.

To the Gevernor-General, Five thousand Pounds :

To each Member of the Council of India, One thousand two hundred Pounds :

To each Governor of the Presidencies of Fort Saint George, Bombay, and Agra, Two thousand five hundred Pounds :

Provided also, that any Governor-General, Governor, or Member of Council appointed by or by virtue of this Act, who shall at the Time of passing this Act hold the Office of Governor-General, Governor, or member of Council respectively, shall receive the same Salary and Allowances that he would have receved if this Act had not been passed.

77. Provided always, and be it enacted, that if any Governor-General, Governor, or Ordinary Member of the Council of India, or any Member of the Council of any Presidency, shall hold or enjoy any

Pension, Salary, or any Place, Office, or Employment of Profit under the Crown or any Public Office of the said Company, or any Annuity payable out of the Civil or Military Fund of the said Company, the Salary of his Office of Governor-General of India, Governor or Member of Council, shall be reduced by the Amount of the Pension, Salary, Annuity, or Profits of Office so respectively held or enjoyed by him.

78. And be it enacted, that the said Court of Directors, with the Approbation of the said Board of Commissioners, shall and may from Time to Time make Regulations for the Division and Distribution of the Patronage and Power of Nomination of and to the Offices, Commands, and Employments in the said Territories, and in all or any of the Presidencies thereof, among the said Governor-General in Council, Governor-General, Governors in Council, Governors, Commander-in-Chief and other Commanding Officers respectively appointed or to be appointed under this Act.

Resignation of Governor-General, Governor, and others

79. And be it enacted, that the Return to Europe or the Departure from India with Intent to return to Europe of any Governor-General of India, Governor, Member of Council, or Commander-in Chief, shall be deemed in Law a Resignation and Avoidance of his Office or Employment, and that no Act or Declaration of any Governor-General, or Governor, or Member of Council, other than as aforesaid, excepting a Declaration in writing under Hand and Seal, delivered to the Secretary for the Public Department of the Presidency wherein he shall be, in order to its being recorded, shall be deemed or held as a Resignation or Surrender of his said Office ; and that the Salary and other Allowances of any such Governor-General or other Officer respectively shall cease from the Day of such his Departure, Resignation, or

Surrender ; and that if any such Governor-General or Member of Council of India shall leave the said Territories, or if any Governor or other Officer whatever in the Service of the said Company shall leave the Presidency to which he shall belong, other than in the known actual Service of the said Company, the Salary and Allowances appertaining to his Office shall not be paid or payable during his Absence to any Agent or other Person for his Use ; and in the event of his not returning or of his coming to Europe, his Salary and Allowances shall be deemed to have ceased on the Day of his leaving the said Territories, or the Presidency to which he may have belonged ; provided that it shall be lawful for the said Company to make such Payment as is now by Law permitted to be made to the Reprsentatives of their Officers or Servants who, having left their Stations intending to return thereto, shall die during their Absence.

Disobedience to Court of Directors to be a misdemeanor

80. And be it enacted, that every wilful disobeying, and every wilful omitting, forbearing, or neglecting to execute the Orders or Instructions of the said Court of Directors by any Governor-General of India, Governor, Member of Council, or Commander-in-Chief, or by any other of the Officers or Servants of the said Company, unless in Cases of Necessity (the Burthen of the Proof of which Necessity shall be on the Person so disobeying or omitting, forbearing or neglecting, to execute such Orders or Instructions as aforesaid) ; and every wilful Breach of the Trust and Duty of any Office or Empolyment by any such Governor-General, Governor, Member of Council, or Commander-in-Chief, or any of the Officers or Servants of the said Company shall be deemed and taken to be a Misdemeanor at Law, and shall or may be proceeded against and punished as such by virtue of this Act.

Removal of colour bar regarding appointments

87. And be it enacted, that no Native of the said Territories, nor any natural-born Subject of His Majesty resident therein, shall, by reason only of his Religion, Place of Birth, Descent, Colour, or any of them, be disabled from holding any Place, Office, or Employment under the said Company.

* * *

Board of Control

109. And be it enacted, that every Power, Authority, and Function by this or any other Act or Acts given to and vested in the said Court of Directors shall be deemed and taken to be subject to such Control of the said Board of Commissioners as in this Act is mentioned, unless there shall be something in the Enactments conferring such Powers, Authorities, or Functions inconsistent with such Construction, and except as to any Patronage or Right of appointing to Office vested in or reserved to the said Court.

110. Provided always, and be it enacted, that nothing herein contained shall be construed to enable the said Board of Commissioners to give or cause to be given Directions ordering or authorizing the payment of any extraordinary Allowance or Gratuity, or Increase of any established Salary, Allowance, or Emolument, unless in the Cases and subject to the Provisions in and subject to which such Directions may now be given by the said Board, or to increase the Sum now payable by the said Company on account of the said Board, except only by such Salaries or Allowances as shall be payable to the Officers to be appointed as hereinbefore is mentioned to attend upon the said Board during the winding up of the Commercial Business of the said Company.

115. And be it enacted, that it shall be lawful

for any Court of Justice established by His Majesty's Charters in the said Territories to approve, admit and inrol Persons as Barristers, Advocates, and Attorneys in such Court without any License from the said Company, anything in any such Charter contained to the contrary notwithstanding: provided always, that the being entitled to practise as an Advocate in the Principal Courts of Scotland is and shall be deemed and taken to be a Qualification for Admission as an Advocate in any Court in India equal to that of having been called to the Bar in England or Ireland.

King's Courts in India may admit Advocates and Attorneys without Company's license.

116. And be it further enacted, that the Court of Directors of the said Company shall, within the first Fourteen sitting Days next after the first Day of May in every Year, lay before both Houses of Parliament an Account made up according to the latest Advices which shall have been received, of the annual Produce of the Revenues of the said Territories in India, distinguishing the same and the respective Heads thereof at each of their several Presidencies or Settlements, and of all their annual Receipts and Disbursements at Home and Abroad, distinguishing the same under the respective Heads thereof, together with the latest Estimate of the same, and also the Amount of their Debts, with the Rates of Interest they respectively carry, and the annual Amount of such Interest, the State of their Effects and Credits at each Presidency or settlement, and in England or Elsewhere, according to the latest Advices which shall have been received thereof, and also a List of their several Establishments, and the Salaries and Allowances payable by the said Court of Directors, in respect thereof; and the said Court of Directors, under the Direction and Control of the said Board of Commissioners, shall forthwith prepare Forms of the said Accounts and Estimates in such

Accounts to be annually laid before Parliament by Court of Directors

Manner as to exhibit a complete and accurate View of the Financial Affairs of the said Company; and if any new or increased Salaries, Establishments, or Pensions shall have been granted or created within any Year, the Particulars thereof shall be specially stated and explained at the Foot of the Accounts of the said Year.

II. Macaulay's speech[1] on the Charter Bill of 1833.

It is a mistake to suppose that the Company was a merely commercial body till the middle of the last century. Commerce was its object; but in order to enable it to pursue that object, it had been, like the other Indian Companies which were its rivals, like the Dutch India Company, like the French India Company, invested from a very early period with political functions. More than 120 years ago, it was in miniature precisely what it now is. It was intrusted with the very highest prerogatives of sovereignty. It had its forts and its white captains, and its black sepoys—it had its civil and criminal tribunals—it was authorized to proclaim martial law—it sent ambassadors to the native Governments, and concluded

Company invested with sovereign power from very early period

1 House of Commons, July 10, 1833.

In June, 1832, Macaulay became an Assistant Commissioner of the Board of Control; six months later he became Secretary. Soon he acquired a domination over Charles Grant, President of the Board, who assured him, "with tears in his eyes," "that he did not know what the Board would do without him". Macaulay took charge of the Charter negotiations with the Directors, and then carried the Charter Bill through the House of Commons during Grant's illness. On the whole, he played a dominating part in moulding and explaining the Bill.

See C. H. Philips, *The East India Company*, pp. 290-294.

treaties with them—it was zamindar of several districts, and within those districts, like other zamindars of the first class, it exercised the powers of a sovereign, even to the infliction of capital punishment on the Hindoos within its jurisdiction. It is incorrect, therefore, to say, that the Company was at first a mere trader, and has since become a sovereign. It was at first a great trader and a petty prince. Its political functions at first attracted little notice, because they were merely auxiliary to its commercial functions. Soon, however, they became more and more important. The zamindar became a great nabob, became sovereign of all India—the 200 sepoys became 200,000. This change was gradually wrought, and was not immediately comprehended ..... It is impossible to fix on any one day, or any one year, as the day or the year when the Company became a great potentate. It has been the fashion to fix on the year 1765, the year in which the Company received from the Mogul a commission authorizing them to administer the revenues of Bengal, Bahar, and Orissa, as the precise date of their sovereignty' I am utterly at a loss to understand why this period should be selected. Long before 1765 the Company had the reality of political power. Long before that year, they made a Nabob of Arcot ; they made and unmade Nabobs of Bengal ; they humbled the Vizier of Oude ; they braved the Emperor of Hindoostan himself. More than half the revenues of Bengal, as Lord Clive stated, were under one pretence or another administered by them. And after the grant, the Company was not, in form and name, an independent power. It was merely a Minister of the Court of Delhi. Its coinage bore the name of Shah Alum.[1]

Growth of Company's political power

Significance of *Dewani*

1 The right of issuing independent coinage in the name of the British sovereign was not assumed till 1835.

Nature of Company's *de facto* power

The inscription which, till the time of Lord Hastings, appeared on the seal of the Governor-General declared that great functionary to be the slave of the Mogul, Even to this day, we have never formally deposed the King of Delhi. The Company contents itself with being Mayor of the Palace, while the *roi faineant* is suffered to play at being a sovereign. In fact, it was considered, both by Lord Clive, and by Warren Hastings, as a point of policy to leave the character of the Company thus undefined, in order that the English might treat the princes in whose names they governed as realities or nonentities, just as might be most convenient............

* * * * *

India should be governed through the Company.

We come then to the great question: Is it desirable to retain the Company as an organ of government for India? I think that it is desirable.... ....We have to solve one of the hardest problems in politics. We are trying to make brick without straw—to bring a clean thing out of an unclean—to give good government to a people to whom we cannot give a free government............If the question were, what is the best mode of securing good government in Europe, the merest smatterer in politics would answer—representative institutions. In India, you cannot have representative institutions. Of all the innumerable speculators who have offered their suggestions on Indian politics, not a single one,........... however democratical his opinions may be, has ever maintained the possibility of giving, at the present time, such institutions to India,............Mr. Mill[1]........ ....was examined on the point. That gentleman is well known to be a very bold and uncompromising politician. He has written strongly—far too strongly, I think—in favour of pure democracy............But

India unfit for representative institutions

1 James Mill.

when he was asked before the committee of last year, whether he thought representative government practicable in India, his answer was—'utterly out of the question.' This, then, is the state in which we are. We have to frame a good government for a country into which, by universal acknowledgement, we cannot introduce those institutions which all our habits—which all the reasoning of European Philosophers—which all the history of our own part of the world would lead us to consider as the one great security for good government. We have to engraft on despotism those blessings which are the natural fruits of liberty. In these circumstances, sir, it behoves us to be cautious, even to the verge of timidity ....

View of James Mill

Some things, however, in the midst of this obscurity, I can see with clearness. I can see, for example, that it is desirable that the authority exercised in this country over the Indian Government should be divided between two bodies—between a Minister or a board appointed by the Crown, and some other body independent of the Crown. If India is to be a dependency of England—to be at war with our enemies—to be at peace with our allies—to be protected by the English navy from maritime aggression—to have a portion of the English army mixed with its sepoys—it plainly follows, that the King, to whom the constitution gives the direction of foreign affairs, and the command of the military and naval forces, ought to have a share in the direction of the Indian Government. Yet, on the other hand, that a revenue of twenty millions a year—an army of 200,000 men—a civil service abounding with lucrative situations—should be left to the disposal of the Crown without any check whatever, is what no Minister, I conceive, would venture to propose. This House is

Government of India should be entrusted to two bodies—one under the Crown, and one independent of the Crown.

Powers of the Crown relating to India should be checked.

indeed the check provided by the constitution on the abuse of the royal prerogative. But that this House is, or is likely ever to be, an efficient check on abuses practised in India, I altogether deny. We have, as I believe we all feel, quite business enough. If we were to undertake the task of looking into Indian affairs as we look into British affairs—if we were to have Indian budgets and Indian estimates—if we were to go into the Indian currency question and the Indian Bank Charter—if to our disputes about Belgium and Holland, Don Pedro and Don Miguel, were to be added disputes about the Debts of the Guicowar and the disorders of Mysore, the ex-King of the Afghans[1] and the Maharajah Runjeet Sing—if we were to have one night occupied by the embezzlements of the Benares Mint, and another by the panic in the Calcutta money-market—if the questions of Suttee or no Suttee, pilgrim tax or no pilgrim tax, ryotwary or zemindary, half batta or whole batta, were to be debated at the same length at which we have debated church reform and the assessed taxes, 24 hours a day and 365 days a year would be too short a time for the discharge of our duties. The House, it is plain, has not necessary time to settle these matters; nor has it the necessary knowledge, nor has it motives to acquire that knowledge............A broken head in Cold Bath Fields produces a greater sensation among us than three pitched battles in India................Even when............the President of the Board of Control[2] made his most able and interesting statement of the measures which he intended to propose for the government of a hundred millions of human beings, the attendance (in the House of Commons) was not

Parliament cannot check abuses in Indian administration.

Parliament has no time to discuss details of Indian administration.

Parliament has no knowledge of Indian affairs and no interest in them.

1 Shah Shuja.

2 Charles Grant.

so large as I have seen it on a turnpike bill or a railroad bill.

I then take these things as proved, that the Crown must have a certain authority over India, that there must be an efficient check on the authority of the Crown, and that the House of Commons is not an efficient check. We must then find some other body to perform that important office. We have such a body—the Company. Shall we discard it ?

The Company as a check on the Crown.

It is true, that the power of the Company is an anomaly in politics. It is strange—very strange—that a joint-stock society of traders—a society the shares of which are daily passed from hand to hand—a society, the component parts of which are perpetually changing............should be intrusted with the sovereignty of a large population, the disposal of a larger clear revenue, the command of a larger army, than are under the direct management of the executive Government of the United Kingdom. But what constitution can we give to our Indian Empire which shall not be strange—which shall not be anomalous ? That Empire is itself the strangest of all political anomalies. That a handful of adventurers from an island in the Atlantic should have subjugated a vast country divided from the place of their birth by half the globe............a territory inhabited by men differing from us in race, colour, language, manners, morals, religion ;—these are prodigies to which the world has seen nothing similar. We interrogate the past in vain. General rules are almost useless where the whole is one vast exception. The Company is an anomaly ; but it is part of a system where everything is anomaly. It is the strangest of all Governments : but it is designed for the strangest of all Empires.

Political power of the Company is an anomaly.

British rule in India is an anomaly.

If we discard the Company, we must find a substitute : and, take what substitute we may, we shall find ourselves unable to give any reason for believing that the body which we have put in the room of the

Substitute for Company not available

Company is likely to acquit itself of its duties better than the Company. Commissioners appointed by the King during pleasure would be no check on the Crown ; Commissioners appointed by the King or by Parliament for life would always be appointed by the political party which might be uppermost, and if a change of administration took pace, would harass the new Government with the most vexatious oppostion ....What we want is a body independent of the Government, and no more than independent—not a tool of the Treasury—not a tool of the opposition. No new plan which I have heard proposed would give us such a body. The Company, strange as its constitution may be, is such a body. It is, as a corporation, neither Whig nor Tory, neither high-church, nor low-church... ....It has constantly acted with a view, not to English politics but to Indian politics. We have seen the country convulsed by faction[1]............And amidst all these agitating events the Company has preserved strict and unsuspected neutrality. This is, I think, an inestimable advantage.

An indepen-dent body wanted

Company's neutrality in English Cpolitics

We must judge of the Indian Government, as of all other Governments, by its practical effects. According to the Hon. Member for Sheffield, India is ill-governed ; and the whole fault is with the Company. Innumerable accusations, great and small, are brought by him against their administration. They are fond of war. They are fond of dominion. The taxation is burthensome. The laws are undigested. The roads are rough. The post goes on foot. And for everything the Company is answerable. From the dethronement of the Mogul princes to the mishaps of Sir Charles Metcalfe's courier, every disaster that has taken place in the East during sixty years is laid to the charge of this unfortunate corporation. And the

Charges against Company's administration

1 Agitation concerning the First Reform Bill.

inference is, that all the power which they possess ought to be taken out of their hands, and transferred at once to the Crown.

Now, sir, it seems to me that for all the evils which the Hon. Gentleman has so pathetically recounted, the Ministers of the Crown are as much to blame as the Company—nay, much more so. For the Board of Control could, without the consent of the Directors, have redressed those evils : and the Directors most certainly could not have redressed them without the consent of the Board of Control.

Ministers must share responsibility for defects in Company's administration.

* * * * *

Do I call the Government of India a perfect Government ? Very far from it. No nation can be perfectly well governed till it is competent to govern itself. I compare the Indian Government with other Governments of the same class, with despotisms, with military despotisms, with foreign military despotisms ; and I find none that approaches it in excellence. I compare it with the Government of the Spanish colonies—and I am proud of my country and my age.......

India better governed than Spanish colonies

* * * *

Patronage

One word as to the new arrangement which we propose with respect to the patronage. It is intended to introduce the principle of competition in the disposal of writerships ; and from this change I cannot but anticipate the happiest results[1]........India is entitled to the service of the best talents which England can spare. That the average of intelligence and virtue is very high in this country, is a matter for honest exultation. But it is no reason for employing average men where you can obtain superior men ....It is proposed that for every vacancy in the civil service four candidates shall be named, and the

1 In his speech on the Bill in the House of Commons Charles Wynn, a former President of the Board of Control.

Civil Service thrown open to limited competition

best candidate elected by examination. We conceive that, under this system, the persons sent out will be young men above par—young men superior either in talents or in diligence to the mass. It is said, I know, that examinations in Latin, in Greek and in Mathematics are no tests of what men will prove to be in life[1]. I am perfectly aware that they are not infallible tests; but that they are tests I confidently maintain. Look at every walk of life—at this House—at the other House—at the Bar—at the Bench—at the Church—and see whether it be not true, that those who attain high distinction in the world are generally men who were distinguished in their academic career. . . . .

Value of academic scholarship

Law-making power of Supreme Government extended

. . . .we propose to give to the Supreme Government the power of legislating for Europeans as well as for natives. We propose that the regulations of the Government shall bind the King's Court as

proposed that the patronage of India should be thrown open to public competition, but that a reasonable number of vacancies should be apportioned to the sons and relatives of the families that had long maintained a connection with India. This proposal was well received in the House of Commons. Macaulay, who was personally in favour of competition, devised a compromise. The original promise to the Directors to leave their patronage untouched was modified. The Directors were to nominate four times the number of expected vacancies; the required number of candidates were then to be selected by examination; the successful candidates were to spend three years at Haileybury College and then sent to India after another examination to establish their seniority. This system, however, did not actually come into force. (See C. H. Philips, *The East India Company*, pp. 294-297).

1 Here is a description of the present system in the United States: "The civil service authorities have had to use examinations because no other method of testing fitness has

they bind all other courts, and that registration by the Judges of the King's Court[1] shall no longer be necessary to give validity to those regulations within the towns of Calcutta, Madras, and Bombay.

. . . .is it not most unjust and ridiculous that on one side of a ditch[2] the edict of the Governor-General should have the force of law, and on the other side it should be of no effect unless registered by the Judges of the Supreme Court ? If the registration be a security for good legislation, we are bound to give that security to all classes of our subjects. If the registration be not a security for good legislation, why require it ? Why give it to a million of them, and withhold it from the other ninety-nine millions ? Is the system good ? Extend it. Is it bad ? Abolish it. But in the name of common sense do not leave it as it is. . . .doubts may fairly be entertained about the expediency of allowing four or five persons[3] to make laws for India ; but to allow them to make laws for all-India without the Mahratta ditch, and to except Calcutta, is the height of absurdity.

Supreme Court's right of registering regulations abolished

I say, therefore, either enlarge the power of the Supreme Court and give it a general veto on laws, or enlarge the power of the Government, and make its regulations binding on all Courts without distinction. The former course no person has ventured to

Should Supreme Court be invested with power of approving or disapproving laws ?

been open to them. Written and oral tests have been their chief reliance, supplemented of course by information secured in other ways as to the merits of candidates. But formal examinations, as every teacher knows, are very undependable agencies for testing personal merit. They are poor tests of such qualities as initiative, industry, honesty, tact, patience, resourcefulness ; yet these are qualities which spell success in public as in private employ."—Munro, *The Government of the United States*, p. 591.

1 Supreme Court.

2 Maratha ditch around Calcutta.

3 Governor-General-in-Council.

Conflict between Supreme Court and Government

propose. To the latter course objections have been made,—but objections which to me, . . . seem altogether frivolous. It is acknowledged, that of late years inconvenience has arisen from the relation in which the Supreme Court stands to the Government[1]. But, it is said, that Court was orginally instituted for the protection of natives against Europeans. The wise course would, therefore, be to restore its original character.

'Mischievous' activities of the Supreme Court in the days of Warren Hastings

Now, sir, the fact is, that the Supreme Court has never been so mischievous as during the first ten years of its power, or so respectable as it has lately been....for a considerable time after its institution, it was the terror of Bengal, the scourge of native informants, the screen of Europeans, a convenient tool of the Government for all purposes of evil, an insurmountable obstacle to the Government in all undertakings for the public good ;. . . .its proceedings were made up of pedantry, cruelty, and corruption ;—its disputes with the Government were at one time on the point of breaking up the whole fabric of society ; and a convulsion was averted only by the dexterous policy of Warren Hastings, who at last bought off the opposition of the Chief Justice for £8,000 a year. It is notorious, that while the Supreme Court opposed Hastings in all his best measures, it was a thorough-going accomplice

Conflict between Supreme Court and Government in Bombay

1 A serious conflict between the Supreme Court and Government of Bombay arose in 1828. The Supreme Court claimed that its jurisdiction extended over the whole Presidency and over every person residing within the Company's territories. Sir John Malcolm, Governor of Bombay, resisted this 'novel and startling' doctrine for, in his view, it 'threatened the very existence of the Company's Government.' The Privy Council decided against the Supreme Court. See Kaye, *Life of Malcolm*, Vol. II, pp. 506—540.

in his worst—that it took part in the most scandalous of those proceedings which fifty years ago roused the indignation of Parliament and of the country—that it assisted in the spoliation of the Princesses of Oude[1]—that it passed sentence of death on Nuncomar.[2]. . . .Sir, so far is it from being true that the character of the Supreme Court has deteriorated, that it has perhaps improved more than any other institution in India. . .The real evil is the state of the law. You have two supreme powers in India. There is no arbitrator except a legislature ten thousand miles off. Such a system is on the face of it an absurdity in politics. My wonder is, not that this system has several times been on the point of producing fatal consequences to the peace and resources of India,—these, I think, are the words in which Warren Hastings describes the effect of the contest between his Government and the Judges—but that it has not actually produced such consequences. The most distinguished Members of the Indian Government—the most distinguished Judges of the Supreme Court—call upon you to reform this system. Sir Charles Metcalfe, Sir Charles Grey, represent with equal urgency the expdiency of having one single paramount council armed with legislative power. . . .

Anomalous relation between Supreme Court and Government

There should be one body for legislation.

Having given to the Government supreme legislative power, we next propose to give to it for a time the assistance of a commission for the purpose of digesting and reforming the laws of India, so that those laws may, as soon as possible, be formed into a code. . . . .

Law Commission for codification of Indian laws

I believe that no country ever stood so much in need of a code of laws as India, and I believe also

1 See Mill, ***History of India***, Book V, Chapter VIII.

2 See Beveridge, ***Trial of Nandakumar***. For a justification of the Supreme Court, see Stephen, ***The Story of Nuncomar and the Impeachment of Sir Elijah Impey***.

Codification rendered necessary by confusion of laws

that there never was a country in which the want might so easily be supplied........in India.... there are several systems of law widely differing from each other, but co-existing and co-equal. The indigenous population has its own laws. Each of the successive races of conquerors has brought with it its own peculiar jurisprudence : the Mussulman his Koran and its innumerable commentaries—the Englishman his statute-book, and his term reports........In one and the same cause the process and pleadings are in the fashion of one nation, the judgment is according to the laws of another. An issue is evolved according to the rules of Westminster, and decided according to those of Benares. The only Mahomedan book in the nature of a code is the Koran ;—the only Hindoo book the Institutes[1] ; everybody who knows these books, knows that they provide for a very small part of the cases which must arise in every community. All beyond them is comment and tradition. Our regulations in civil matters do not define rights ; they merely establish remedies. If a point of Hindoo Law arises, the judge calls on the Pundit for an opinion. If a point of Mahomedan law arises, the judge applies to the Cauzee. What the integrity of these functionaries is, we may learn from Sir William Jones... .... Even if there were no suspicion of corruption, the science which they profess is in such a state of confusion that no reliance can be placed on their answers. Sir Francis Macnaghten tells us, that........texts may be produced on any side of any question ; that expositors equal in authority perpetually contradict each other ; ....that it is vain to think of extracting certainty from the books of the jurists. The consequence is that in practice the decisions of the tribunals are altogether arbitrary. What is administered is not law, but a kind of rude and capricious equity....

Insufficiency and defects of Hindu and Muslim law

1 *Manu Samhita.*

........It is time that the magistrate should know what law he is to administer—that the subject should know under what law he is to live. We do not mean that all the people of India should live under the same law: far from it: there is not a word in the Bill........susceptible of such an interpretation........ We propose no rash innovation; we wish to give no shock to the prejudices of any part of our subjects. Our principle is simply this—uniformity where you can have it—diversity where you must have it—but in all cases certainty.

Certainty of law required, but uniformity not to be insisted upon

As I believe that India stands more in need of a code than any other country in the world, I believe also that there is no country on which that great benefit can more easily be conferred. A code is almost the only blessing—perhaps it is the only blessing which absolute Governments are better fitted to confer on a nation than popular Governments.....It is the work which especially belongs to a Government like that of India—to an enlightened and paternal despotism.[1]

'Enlightened and paternal despotism' best fitted to codify laws

.......I allude to that wise, that benevolent, that noble clause, which enacts that no native of our Indian Empire shall, by reason of his colour, his descent, or his religion, be incapable of holding office ......I must say that, to the last day of my life, I shall be proud of having been one of those who assisted in the framing of the Bill which contains that clause. We are told that the time can never come when the natives of India can be admitted to high civil and military office. We are told that this is the condition on which we hold our power. We are told, that we are bound to confer on our subjects—

Removal of Indians' ineligibility for offices

1 Macaulay himself drafted the Indian Penal Code in 1837, when he was Law Member in the Supreme Council. It was revised by Sir Barnes Peacock and finally adopted by Lord Canning in 1860.

every benefit........which we can confer on them without hazard to our own domination. Against that proposition I solemnly protest as inconsistent alike with sound policy and sound morality.......

Destiny of India

The destinies of our Indian Empire are covered with thick darkness........It may be that the public mind of India may expand under our system till it has outgrown that system; that by good government we may educate our subjects into a capacity for better government; that, having become instructed in European knowledge, they may, in some future age, demand European institutions. Whether such a day will ever come I know not. But never will I attempt to avert or to retard it. Whenever it comes, it will be the proudest day in English history. To have found a great people sunk in the lowest depths of slavery and superstition, to have so ruled them as to have made them desirous and capable of all the privileges of citizens, would indeed be a title to glory all our own. The sceptre may pass away from us.......Victory may be inconstant to our arms. But there are triumphs which are followed by no reverses. There is no Empire exempt from all natural causes of decay. Those triumphs are the pacific triumphs of reason over barbarism; that Empire is the imperishable empire of our arts and our morals, our literature and our laws.

Real greatness of British rule in India

III. Despatch[1] on Charter Act of 1833 from Court of Directors to Government of India, 1834.

4. The changes which the Act contemplates in the Government and political constitution of British India are partly prospective and partly immediate. The state of things at which it aims in prospect is

1 December 10, 1834. This despatch was probably composed by James Mill.

that which is comprehensively described in the preambulary part of the 53rd Clause, when a general system of justice and policy, and a code of laws, common (as far as may be) to the whole people of India, and having its varieties classified and systematized, shall be established throughout the country. The preparation of such a system and such a code must be set about immediately; and it is principally with a view to that object, and for the purpose of collecting and arranging the necessary materials, and of advising the Government as to the disposition of them that the Law Commissioners are to be appointed. But with whatever celerity those Commissioners proceed, their task cannot be completed in a day. The Act indeed asserts, or rather assumes, it to be expedient that the general system on prospect "should be established in the said Territories at an early period": but early is a word of relation. No time should be lost by delay; none should be worse than lost by precipitation. The careful observance of these two conditions will practically determine the length of time required.

Changes contemplated-partly prospective and partly immediate.

Preparation of a code of law 'common to the whole people of India'

Law Commission

5. Thus, however, besides that ultimate state of things to which the Act looks forward, it contemplates an intermediate period; a period of enquiry, of consideration, of preparation, in some degree even of experiment; and it is to this interval that several of its provisions relate. As the labours of the Law Commissioners are intended to fill up the whole of this interval, one principal care of the Government will be to guide the course and promote the efficiency of those labours; and this is plainly contemplated by the Act which, however, does not limit itself to this view of the subject. Without awaiting the result of enquiries and deliberation of the Commissioners it proceeds at once to change the constitution of the Indian Government by investing the Governor-Gene-

'New and independent' legislative powers of Governor-General in Council

ral in Council with legislative powers of new and independent kind, by extending the operation of those powers over the subordinate Governments, and by so modifying the structure of the Supreme Council internally as to adapt it to the discharge of its altered functions.

Justification of changing constitution of Supreme Council before preparation of Law Code :

6. At first sight this change may perhaps appear premature. It may seem that the more natural course would have been to leave the Government, for the present, nearly as it is, or at least to withhold from it the extensive powers of legislation which it is to exercise under the Act ; and, when the Commissioners shall have so far completed their enquiries and deliberations as to make it practicable to adopt a general scheme of law, judicature and police, then, and no sooner, to alter the constitution of the Government with an especial reference to that new sphere of action which it will have to enter.

7. But reflection will, as we believe, shew that the legislature has judged wisely, or rather has only obeyed a moral necessity in introducing immediately and without delay, the important alterations to which we have referred.

(i) To facilitate the work of the Law Commission

8. Although some time may elapse before the whole people of India, native and foreign, can be placed under one common system, yet it is highly desirable that approximations should previously be made to that result. In this view, it will often be advantageous to act on the suggestions of the Commissioners partially and experimentally; thus facilitating as well as accelerating the introduction of the system in question. But in order to act on this plan, it is obviously necessary that the Local Government should have the means of legislating freely and with effect ; that it should be able to shape its course according to its own view, both of the results to be

ultimately accomplished, and of the circumstances to be intermediately consulted ; and at any rate that some of the anomalies which at present belong to the frame of the Government should be from time to time removed.

9. There were, however, other considerations which, much more strongly than these, dictated such alterations in the Government as should enable it to legislate for a great community. The Act unsealed for the first time the doors of British India to British subjects of European birth. Hitherto the English in India have been there only on sufferance. Now they have acquired a right, however qualified, to live in the country and even to become occupants of land, and there is every prospect of a considerable increase of their numbers. It is therefore necessary that the Local Governments should have full means of dealing with them, not merely in extreme cases, and by a transcendental act of authority, but in the current and ordinary exercise of its functions and through the medium of laws carefully made and promptly and impartially administered. On no other condition could the experiment of free ingress of Europeans be safely tried.

(ii) To keep control over Europeans, to whom 'free ingress' to India has been allowed

10. While new legislative powers are conferred on the Supreme Government, the legislative powers hitherto possessed by the subordinate Governments are to be modified and abridged. On this topic we need hardly refer to the discussions which have of late years taken place both in India and in England on the best mode of constituting the Indian Governments ; the decisive consideration with the legislature probably was the necessity of strengthening the Supreme Government in consequence of the free admission of Europeans into the interior of the country.

Legislative powers of subordinate Governments 'modified and abridged'

11. In whatever way the Europeans may disperse themselves throughout India, they will be united together by a powerful sympathy and will in fact maintain a constant communication. It is therefore both just and natural that they should live under the control of the same laws; nor would it be easy to legislate in reference to a part of them without keeping in view the whole body. It is specially to be recollected that the task of legislating in India for Europeans naturalized in the country and not dependent on the Government is altogether new and experimental. The difficulties of this task may have been overrated, but undoubtedly they are not slight or evanescent, and they would be much aggravated if the different Governments were all armed with co-equal and independent legislative powers, and if they were to proceed to exercise such powers at their discretion respectively, and perhaps with very different views and according to inconsistent principles. While, therefore, it is important in reference to the admission of Europeans into the interior, that the subordinate Governments, commanding as they do different regions of the empire, should have their executive capacities and even that a new station should be added to them in the north of India, yet there seem good reasons for collecting and uniting all the functions of legislation in one central and metropolitan Government.

Centralisation of legislation rendered necessary by the 'free ingress' of Europeans

15. The first principle is that no law, except one of an occasional kind, or arising out of some pressing emergency, should be passed without having been submitted to mature deliberation and discussion.

16............In this country the length and publicity of the process by which a law passes from the shape of a project into that of a complete enactment, and the conflict of opinions through which the transit

must be made, constitute a security against rash or thoughtless legislation. There may indeed be exceptions, for there are cases in which the pressure of popular feeling forces a law prematurely into existence............We deem it of great moment, therefore, that you should by positive rules provide that every project or proposal of a law shall travel through a defined succession of stages in Council before it is finally adopted ; that at each stage it shall be amply discussed ; and that the intervals of discussion shall be such as to allow to each Member of Council adequate opportunity of reflection and enquiry.

Procedure to be followed by Supreme Council in law-making

* * * * *

18............Provision must of course be made for extreme cases, and in the last resort the ultimate power specially reserved by the 49th clause of the new Act to the Governor-General of acting singly and on his own responsibility, will afford a refuge from the possible evil of distracted counsels and infirm resolutions. But the occasions which compel the use of these extreme remedies rarely occur in well-governed states ; and in general, we are persuaded that in a punctual, constant, and even fastidious adherence to your ordinary rules of practice, you will find the best security, not only for the efficiency, but also for the despatch of your legislative proceedings.

Special legislative power of Governor-General

19. While thus considering the deliberative part of your duties, our attention is necessarily led to one important alteration which the Act has made on the constitution of the Supreme Council. We allude to the appointment of the fourth ordinary member of Council, as described in the 40th Clause.

20. In the first and simplest view of the remarkable provision, the presence and assistance of the fourth counsellor must be regarded as a substitute for that sanction of the Supreme Court of Judi-

Fourth Ordinary Member of Council

cature which has hitherto been necessary to the validity of regulations affecting the inhabitants of the Presidencies, but which under the new system, will no longer be required. It is, however, evident that the view of the legislature extended beyond the mere object to providing such a substitute.

Duties of Fourth Ordinary Member of Council

21. The concurrence of the fourth member of Council may be wanting to a law, and the law may be good still, even his absence at the time of enactment will not vitiate the law, but Parliament manifestly intended that the whole of his time and attention and all the resources of knowledge and ability which he may possess, should be employed in promoting the due discharge of the legislative functions of the Council. He has indeed no pre-eminent control over the duties of this department, but he is peculiarly charged with them in all their ramifications. His will naturally be the principal share, not only in the task of giving shape and connexion to the several laws as they pass, but also in the mighty labour of collecting all that local information, and calling into view all those general considerations which belong to each occasion, and of thus enabling the Council to embody the abstract and essential principles of good government in regulations adapted to the peculiar habits, character, and institutions of the vast and infinitely diversified people under their sway.

22. It is be observed that the fourth member is declared not to be entitled to sit or vote in the Council, except at meetings for the making of laws and regulations.

23. We do not, however, perceive that you are precluded by anything in the law from availing yourselves of his presence without his vote on any occasion on which you may think it desirable; and on many, if not all, of the subjects on which your deli-

beration may turn, an intimate knowledge of what passes in Council will be of essential service to him in the discharge of his legislative functions. Unless he is in habits of constant communication and entire confidence with his colleagues, unless he is familiar with the details of internal administration, with the grounds on which the Government acts, and with the information by which it is guided, he cannot possibly sustain his part in the legislative conferences or measures with the knowledge, readiness, and independence essential to a due performance of his duty.

Fourth Ordinary Member may, and should, attend Council even when its agenda does not include law-making.

24............It should, we think, be open to every member of the Council, to propose any law or regulation for adoption and his proposal should be taken into discussion even though he should, at the outset, stand alone in his opinion. In deliberative assemblies differently and more numerously constituted no proposition can be entertained which is not seconded, as well as moved. The reasonableness of the rule is obvious, but in the deliberations of a small and select body, we do not think that the same condition should be enforced.

Initiative in law-making may be taken by every member of the Council.

25...........Another point, not less important, is to provide that in the work of legislation, you shall as far as may be practicable avail yourselves of external aid. Persons who are not members of your body may afford you valuable assistance, either by suggesting laws that are required, or by pointing out what is improbable or objectionable, in the drafts or projects of laws under consideration.

'External aid' in law-making

26. With respect to the suggestion of new laws, the Act (by Clause 66) expressly requires you to take into consideration the drafts or projects of laws or regulations which any of the subordinate Governments may propose to you...........The Act also, we need not say, contemplates constant communications from the Law Commissioners, which communications are

Initiative in law-making may be taken by subordinate Governments.

intended to furnish the grounds or the materials for legislation. Useful intimations may also be derived from the Public Boards, from the Judges of the Supreme Court, from all persons, whether Native or European, invested with a judicial character or holding official stations of eminence, from all Colleges and other constituted bodies, perhaps from the Native heads of villages, or even private individuals of personal weight and influence. We do not mean that these Parties should by law be entitled to call on the legislature to discuss such suggestions, or to come to any decision respecting them. No such rights belongs to those who petition to the House of Parliament in this country. We mean only that their suggestions should be received and should even be invited.

Suggestions regarding law-making should be received from various persons.

27. Not less material is the other object to which we have adverted, that of taking the opinions of the community, or of influential persons, on the projects of law under consideration ; an advantage which in England is secured by the publicity of the discussions in Parliament, and by the time which the passing of an Act requires ; but which can be obtained in India only by making special provision for it........

28. ....All, therefore, that we should require would be that, with such exceptions as you may deem requisite with a view to the progress of current and ordinary legislation, the project of intended laws shall be so made known to the Public as to afford opportunities to the persons or classes whom they may particularly affect, to offer their comments or complaints to the legislature ; and that the rule which you at any time prescribe to yourselves for the purpose shall be submitted to the consideration of the Authorities at home.

'Projects of intended laws' should be made known to the public.

* * * * *

38. Heretofore you have been invested with

executive powers of superintendence over the legislation of the subordinate Presidencies. But as those Presidencies have had the right of legislating for themselves, your superintendence has been exercised only on rare and particular occasions. Now their legislative functions, with a reserve for certain excepted cases, are to be subordinate to those of the Supreme Government. The whole responsibility rests on you; and every law which has an especial reference to the local interests of any of those Presidencies, and every general law in respect of its particular bearing and operation on such local interests, ought to be preconsidered by you with as deep and as anxious attention as if it affected only the welfare of the Presidency in which you reside. You may indeed, as we have already observed, receive from the subordinate Presidencies suggestions or drafts of laws and these it may frequently be expedient to invite. But, in no instance will this exempt you from the obligation of so considering every provision of the law as to make it really your own, the offspring of your own minds, after obtaining an adequate knowledge of the case. We say this knowing as we do, how easily the power of deligating a duty degenerates into the habit of neglecting it; and dreading lest at some future period, under the form of offering projects of laws, the subordinate Presidencies should be left to legislate for themselves, with as little aid from the wisdom of the Supreme Government as when the power of legislating was ostensibly in their own hands.

In law-making, Supreme Government should pay 'deep and anxious attention' to interests and welfare of territories under subordinte Governments.

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37. In contemplating the extent of legislative powers thus conferred immediately on our Supreme Government, and in the second instance on ourselves, in considering that in the use of this power the differ-

Difficulty of legislating for India

ence between the worst and the best of Governments mainly depends, in reflecting how many millions of men may, by the manner in which it shall in the present instance be exercised, be rendered happy or miserable, in adverting to the countless variety of interests to be studied and of difficulties to be overcome in the execution of this mighty trust, we own that we feel oppressed by the weight of the responsibility under which we with you are conjointly laid. Whatever means or efforts can be employed on the occasion, whatever can be effected by free and active discussion, or by profound and conscientious deliberation; whatever aids can be derived from extrinsic counsel or intelligence, all at the utmost will be barely commensurate with the magnitude of the sphere to be occupied, and of the service to be performed. We feel confident that to this undertaking your best thoughts and care will be immediately and perseveringly applied; and we invite the full, the constant, and the early communication of your sentiments in relation to it. On our part, we can venture to affirm that no endeavour shall be wanting in promoting your views and perfecting your plans. Others also who are in a situation, by advice or exertion, to assist in the work, will contribute to it, we hope, to the extent of their power, and we trust that by the blessing of Divine Providence on our united labours, the just and beneficient intentions of this country, in delegating to our hands the legislative as well as the executive administration of the mightiest, the most important, and the most interesting of its transmarine possessions, will be happily accomplished.

Necessity of close co-operation between London and Calcutta

39. For this subject we particularly refer you to the 43rd, 46th, 81st, 82nd, 83rd, 84th, 85th and 86th clauses of the Act.

40. These clauses bring into view the legislative duties which will be imposed on you by the free admission now to be afforded to British subjects into the interior of India,[1] among the first of which duties will be the obligation of providing, as directed by the 85th clause, for the protection of the natives from insult and outrages in their persons, properties, religions and opinions.

Duty of protecting Indians from Europeans in India

41. The importance and indeed the absolute necessity of extending to the natives such protection we need not demonstrate. Though English capitalists settling in the country, if they are governed by an enlightened sense of their own interests, will see the importance of acquiring the confidence of their native neighbours by a just and conciliatory course of conduct, yet even some of this class may yield to the influence of worse motives. Eagerness for some temporary advantages, the consciousness of power, the pride of a fancied superiority of race, the absence of any adequate check from public opinion, the absence also in many cases of the habitual check supplied by the stated and public recurrence of religious observances—these and other causes may occasionally lead even the settled resident to be less guarded in his treatment of the people than would accord with a just view of his situation. Much more may acts of outrage or insolence be expected from casual adventurers cut off possibly from Europe by the consequences of previous misconduct, at all events, released from the restraints which in this country the overawing influence of society imposes on all men not

Maltreatment of Indians by Europeans apprehended

1 In reply to some queries of the Board of Control Raja Ram Mohan Roy observed in 1831 that the opening of India to European colonisation 'could only be regarded as adopted for the purpose of entirely supplanting the native inhabitants and expelling them from the country.' He also pointed out that the existing courts were by no means competent to exercise an adequate control over British-born subjects in the interior.

totally abandoned. The greater necessity is there that such persons should be placed under other checks.

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Why Europeans were allowed 'free ingress' into India

43. Whatever provision may be made against occasional abuse, the views of Parliament in opening the interior of India to Europeans are to be carefully kept in recollection. The causes which effect this great alteration in our Indian policy are not restraining but enabling enactments. The legislature has avowedly proceeded on the principle, that generally speaking and on the whole, the increased entrance of the Europeans into the interior of India, their increased power of blending their interests with those of the country, and their increased opportunity of freely associating with the natives, will prove beneficial to the native people, and promotive of their general improvement and prosperity. That which the legislature has thus assumed is also to be assumed by us and by you. Your laws and regulations, therefore, and also all your executive proceedings in relation to the admission and settlement of Europeans, like that law of the Imperial Legislature out of which they grow, must generally speaking and on the whole be framed on a principle not of restriction but of encouragement. The conditions which you shall see fit to impose on private persons coming from Europe for the highly proper purpose of placing and keeping them within the supervision of an all-seeing Police, must not be more than necessary for that object. The regulations which you shall make with the just and humane design of protecting the natives from ill-treatment must not be such as to harass the European with any unnecessary restraints or to give him uneasiness by the display of improper distrust and suspicion. Laws passed in such a spirit tend to produce the very mischiefs which they aim at

In framing laws for Europeans in India, Supreme Government should follow 'a principle not of restriction but of encouragement.'

preventing. To the evil-minded they suggest evil; they furnish the discontented with materials or pretexts for clamour, and they irritate the peaceably disposed into hostility.

* * * *

57. The means which the present Act affords you of applying the remedy referred to are set forth in the 43rd, 45th and 46th clauses. By the first of these, the laws and regulations which you make under the Act are to bind all Courts of Justice, whether chartered by the King or not, and their jurisdictions, and also all places and things throughout the territories of British India. By the 45th clause your laws and Regulations are to be taken notice of by all Courts of Justice within those territories and they need not be registered in any Court. By the 46th clause you are restrained from making without our previous sanction any Law or Regulation which shall empower any Courts other than those chartered by the King to sentence British subjects, or their children to death, or which shall abolish the Courts so chartered. In respect to the last-mentioned clause we certainly should not without much consideration give our sanction to the important changes, there referred to, and for the present those changes may be regarded as out of view...............Your Laws and Regulations no longer require to be authenticated by registration in the Supreme Courts, and they, notwithstanding, bind those Courts and must be noticed by them without being specially pleaded or proved. This is the known privilege of sovereign legislation. Beyond this you are expressly authorized to make laws for the jurisdiction of the Supreme Courts, a most material qualification as we conceive of the inability to abolish them; since in virtue of this authority you may reduce the extent or circumscribe the sphere of their judicial power in any degree

Supreme Government empowered to make laws and regulations binding on all courts, places and things in British India

Restriction on law-making power of Supreme Government

Laws no longer to be authenticated by registration in Supreme Court

consistent with their retaining their essential character.

Provision about British-born subjects

58. With regard to British-born subjects, when the Act says that you shall not pass laws making them capitally punishable otherwise than by the King's Courts, it does by irresistible implication authorize you to subject them in all other criminal respects and in all civil respects whatever to the ordinary tribunals of the Country. We know not indeed that there is any crime for which, within this clause, they may not be made amenable to the Country tribunals, provided that the law in giving those tribunals jurisdiction over the crime shall empower them to award to it some other punishment than death.

British-born subjects to be subjected to same Courts as Indians

59. From these premises there are some practical inferences to which we must call your attention. First, we are decidedly of opinion that all British-born subjects throughout India should forthwith be subjected to the same tribunals with the Natives. It is of course implied in this proposition that in the interior they shall be subjected to the Mofussil Courts. So long as Europeans, penetrating into the interior, held their places purely by the tenure of sufferance, and bore in some sense the character of delegates from a foreign power, there might be some reason for exempting them from the authority of those judicatures to which the great body of the inhabitants were subservient. But now that they are to become inhabitants of India, they must share in the judicial liabilities as well as in the civil rights pertaining to that capacity, and we conceive that their participation in both should commence at the same moment.

60. It is not merely on principle that we arrive at this conclusion. The 85th clause of the Act, to which we have before referred, after reciting that the

removal of restriction on the intercourse of Europeans with the country will render it necessary to provide against any mischiefs or dangers that may thence arise, proceeds to direct that you shall make laws for the protection of the Natives from insult and outrage —an obligation which in our view you cannot possibly fulfil, unless you render both Natives and Europeans responsible to the same judicial control. There can be no equality of protection where justice is not equally and on equal terms accessible to all.

Protection of Indians from mal-treatment by Europeans cannot be assured unless they are subjected to same Courts

61. In laying down this proposition, however, we must guard against misconception. Though an Englishman be made amenable to the same tribunal with the Native, and though his rights be placed under the same supervision and protection, it does not follow that those rights are to be determined by the same rule. It is not necessary, for example, that the property of an Englishman should descend by the Indian rather than by the English Law of Succession. In cases of marriage the same tribunal may observe one rule in respect to the Englishman, another in respect to the Mussulman, and a third in respect to the Hindoo. Even in criminal cases, where such distinctions are least desirable, they may yet sometimes be necessary, since it is coceivable that what would operate as a severe penalty to a Hindoo, would be felt as none by an Englishman. But variances like these do not affect the main principle. The maxim still remains that justice is to be distributed to men of every Race, Creed, and Colour, according to its essence, and with as little diversity of circumstances as possible.

Different laws and customs may be applied to Europeans and Indians, although they are subjected to same Courts

62. Secondly, in looking forward to the effect of making Englishmen triable by the Mofussil Courts you will do well to take into your renewed and very serious consideration a question often mooted, and even partially discussed, though as yet undecided.

Question of introducting trial by Jury

We mean whether or not the use of Juries in Criminal Trials should be introduced into the Provinces. We would not blindly yield to the opinion or the prejudice that it is the inalienable right of an Englishman under a Criminal accusation to be tried by a Jury. The only inalienable right of an accused Englishman is justice; and if he resides in the Interior of India, he must be content with such justice as is dispensed to the Natives. But the prospect of an increased residence of Englismen in the Interior, considering their known attachment to the principle of this Institution, forms an additional reason for the consideration of the expediency or inexpediency of adopting it generally.

Criminal procedure of England should not be transferred *in toto* to India

63. Even, however, if it be so adopted, it is neither necessary nor expedient that the Jury Trial which may be established in India should be an exact copy of that which subsists in England. Whatever may be the prejudices of Englishmen, we strongly deprecate the transfer to India of all the peculiarities of our Criminal Judicature. We are not satisfied that these peculiarities are virtues. There is no inherent perfection in the number twelve, nor any mysterious charm in an enforced unanimity of opinion, and legislating for the Indian people, we should be apt to seek the precedents in the ancient usages of India, rather than in the modern practice of England. The system of Criminal Judicature which you adopt must be formed with an especial regard to the advantage of the Natives, rather than the New Settlers, not because the latter are in themselves less worthy of consideration, but because they are comparatively few, and Laws and Institutions exist for the benefit not of the few but of the many.

Legislation for India should be based on ancient usages to India.

76. We have now completed all that we deem it necessary to say at present regarding the legislation to be exercised, and the laws to be made, in India. We will proceed to consider the new relation in which you will be placed with reference to the subordinate Governments, not by means of your legislative supremacy, but in other respects.

Relations of the Supreme Government with the subordinate Governments

77. The words of the 39th clause are very comprehensive : 'The superintendence, direction, and control of the whole civil and military Government of all the said territories and revenues in India shall be vested in the said Gonernor-General in Council'

78. The powers here conveyed, when the words are interpreted in all their latitude, include the whole powers of Government. And it is of infinite importance that you should well consider and understand the extent of the responsibility thus imposed upon you. The whole civil and military Government of India is in your hands, and for what is good or evil in the administration of it, the honour or dishonour will rebound upon you.

79. With respect to the exercise of your legislative powers in the several Presidencies, what we have adduced of a general nature on that subject will, for the present, suffice.

Line between local and general government should be carefully drawn.

80. With respect to the other power which you are called upon to exercise, it will be incumbent upon you to draw, with much discrimination and reflection, the correct line between the functions which properly belong to a local and subordinate Government and those which belong to the general Government ruling over and superintending the whole.

81. When this line is improperly drawn the consequence is either that the general Government interferes with the province of the Local Government, and enters into details which it cannot manage,

and which preclude its consideration of more important objects ; or that it withdraws its attention from the evidence of many things which may be right or wrong in the general course of the local administration, and thus partially deprives the State of the benefit of its superintendence and control.

Imperfect exercise of control by Supreme Government over subordinate Governments

82. It is true that the former Acts of Parliament, which made the Local Government of Bengal a supreme Government, gave the Governor-General in Council a control and superintendence over the other Presidencies as complete and paramount as it was possible for language to convey, and this we must assume to have been the intention of the Legislature. In practice, however, the Supreme Government made little exercise of its superintending authority, and the result has been that even that little exercise of it has been generally made when it was too late to be made with real effect, namely, after the subordinate Government had taken its course ; thus losing the character of control and responsibility, and retaining only that of *ex post facto* intervention—a sort of intervention always invidious, and in most cases nothing but invidious, because what was already done, however open to censure, was beyond the reach of recall or correction.

Control of Supreme Government over subordinate Governments should be made effective.

83. It is evidently the object of the present Act to carry into effect that intention of the Legislature to which we have alluded. Invested as you are with all the powers of Government over all parts of India, and responsible for good government in them all, you are to consider to what extent, and in what particulars, the powers of Government can be best exercised by the local authorities, and to what extent, and in what particulars, they are likely to be best exercised when retained in your own hands. With respect to that portion of the business of Government which

you fully confide to the local authorities, and with which a minute interference on your part would not be beneficial, it will be your duty to have always before you evidence sufficient to enable you to judge if the course of things in general is good, and to pay such vigilant attention to that evidence as will ensure your prompt interposition whenever anything occurs which demands it.

84. In general it is to be recollected that in all cases where there are gradations of authority the right working of the system must very much depend on the wisdom and moderation of the supreme authority and also of the subordinate authorities. This is especially true of a system so peculiar as that of our Indian Empire. It was impossible for the Legislature, and it is equally so for us in our instructions, to define the exact limits between a just control and a petty, vexatious, meddling interference. We rely on the practical good sense of our Governor-General in Council, and of our other Governors, for carrying the law into effect in a manner consonant with its spirit, and we see no reason to doubt the possibility of preserving to every subordinate Government its due rank and power, without impairing or neutralising that of the highest.

Exact limits between control and interference cannot be defined

85. The subordinate Governments will correspond directly with us as formerly, but we think that you should immediately receive copies of all their more important letters to us, both as part of the evidence of their proceedings which you should have before you, and that we may have the benefit of the observations which you may have to make, and which we desire that you will always despatch to us with the smallest possible delay.

Correspondence of subordinate Governments with Court of Directors

85. It will be for you to determine what part of their records, or what other documents, it will be necessary for you regularly to receive as evidence of

the general proceedings of the subordinate Governments, and as an index to the other documents which you will have occasion to call for when anything occurs which you desire to investigate.

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Seat of Supreme Government

97. The Legislature has left the seat of the Supreme Government, both permanent and temporary, to its own choice. The important circumstance, however, of making the Governor-General local Governor of Bengal, renders it necessary that his habitual residence should be in the place where he can best perform both sets of his duties, that is, in Bengal. We have no doubt, therefore, that you will concur with us in thinking that the seat of the Supreme Government should be at Calcutta, where your records are now deposited, and where the requisite Buildings, public and private, already exist.

Governor of Bengal

98. It is true the Governor-General may appoint a Deputy as Governor of Bengal. But this arrangement would need to be permanent, if the seat of the Supreme Government were not in Bengal; and in that there would be considerable difficulty. The Governor can appoint as his Deputy, only one of the ordinary members of the Supreme Council. But if one of the four ordinary members of the Supreme Council is taken away, three only remain. By express enactment also it is established, that three ordinary Members shall be present to constitute a Legislative Council. But the inconvenience of being unable to transact business without the presence of every Member of the Council must be obvious, especially in India, where the health of Europeans is so precarious.

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100. There is one function of Government, with respect to which it may be a question in what hands

it should be lodged—we mean the regulation and management of the external relations. With respect to the great questions of peace and war, there is no room for deliberation. It is very obvious they should be determined wholly by the superintending Government which alone has under its eye the whole of the relations of the State. We think indeed that the diplomatic interests of the State will be placed with most advantage entirely in the hands of the Supreme Government; and the patronage connected with that department will of course follow the duties. It does not follow, nor do we mean, that if, from proximity, or any other cause, a particular Residency, or a particular negotiation, can be better superintended by a local, than the general Government, the general Government should not delegate that superintendence.

Control of external relations vested in Supreme Government

Supreme Government may delegate diplomatic business to a Local Government

103. By clause 87 of the Act it is provided that no person by reason of his birth, creed, or colour, shall be disqualified from holding any office in our service.

Removal of disqualification of Indians for appointment to Company's service

104. It is fitting that this important enactment should be understood in order that its full spirit and intention may be transfused through our whole system of administration.

105. You will observe that its object is not to ascertain qualification, but to remove disqualification. It does not break down or derange the scheme of our Government as conducted principally through the instrumentality of our regular servants, civil and military. To do this would be to abolish or impair the rules which the Legislature has established for securing the fitness of the functionaries in whose hands the main duties of Indian administration are to be reposed—rules to which the present Act makes a material addition in the provisions relating to the

Real interpretation of clause 87

college at Haileybury. But the meaning of the enactment we take to be that there shall be no governing caste in British India; that whatever other tests of qualification may be adopted, disinctions of race or religion shall not be of the number; that no subject of the King, whether of Indian or British or mixed descent, shall be excluded either from the posts usually conferred on our uncovenanted servants in India, or from the covenanted service itself, provided he be otherwise eligible consistently with the rules and agreeably to the conditions observed and exacted in the one case and in the other.

Employment of natives in 'official situations'

106. In the application of this principle, that which will chiefly fall to your share will be the employment of natives, whether of the whole or the mixed blood, in official situations. So far as respects the former class—we mean natives of the whole blood—it is hardly necessary to say that the purposes of the Legislature have in a considerable degree been anticipated; you well know, and indeed have in some important respects carried into effect, our desire that natives should be admitted to places of trust as freely and extensively as a regard for the due discharge of the functions attached to such places will permit. Even judicial duties of magnitude and importance are now confided to their hands, partly no doubt from considerations of economy, but partly also on the principles of a liberal and comprehensive policy; still a line of demarcation, to some extent in favour of the natives, to some extent in exclusion of them, has been maintained; certain offices are appropriated to them, from certain others they are debarred—not because these latter belong to the covenanted service, and the former do not belong to it, but professedly on the ground that the average amount of native qualifications can be presumed only to rise to a certain limit.

Criterion of fitness

It is this line of demarcation which the present enactment obliterates, or rather for which it substitutes another, wholly irrespective of the distinction of races. Fitness is henceforth to be the criterion of eligibility.

107. To this altered rule it will be necessary that you should, both in your acts and your language, conform ; practically, perhaps, no very marked difference of results will be occasioned. The distinction between situations allotted to the covenanted service and all other situations of an official or public nature will remain generally as at present [1]

Considerable Indianization of service not expected

108. Into a more particular consideration of the effects that may result from the great principle which the Legislature has now for the first time recognised and established we do not enter, because we would avoid disquisition of a speculative nature. But there is one practical lesson which, often as we have on former occasions inculcated it on you, the present subject suggests to us once more to enforce. While, on the one hand, it may be anticipated that the range of public situations accessible to the natives and mixed races will gradually be enlarged, it is, on the other hand, to be recollected that, as settlers from Europe find their way into the country, this class of persons will probably furnish candidates for those very situations to which the natives and mixed race will have admittance Men of European enterprise and education will appear in the field ; and it is by the prospect of this event that we are led particularly to impress the lesson already alluded to on your attention. In every view it is important that the indigenous people of India, or those among them who by their habits, character, or position may be induced to aspire to office, should, as far as possible, be qualified to meet their European competitors.

European competition for service

1 See Anderson and Subedar, *Development of an Indian Policy*, pp. 71-76.

Indians to be made fit to meet European competition

Thence, then, arises a powerful argument for the promotion of every design tending to the improvement of the natives whether by conferring on them the advantages of education, or by diffusing among them the treasures of science, knowledge, and moral culture. For these desirable results, we are well aware that you, like ourselves, are anxious, and we doubt not that, in order to impel you to increased exertion for the promotion of them, you will need no stimulant beyond a simple reference to the considerations we have here suggested.

109. While, however, we entertain these wishes and opinions, we must guard against the supposition that it is chiefly by holding out means and opportunities of official distinction that we expect our Government to benefit the millions subjected to their authority. We have repeatedly expressed to you a very different sentiment. Facilities of official advancement can little affect the bulk of the people under any Government, and perhaps least under a good Government. It is not by holding out incentives to official ambition, but by repressing crime, by securing and guarding property, by creating confidence, by ensuring to industry the fruit of its labour, by protecting men in the undisturbed enjoyment of their rights, and in the unfettered exercise of their faculties, that Governments best minister to the public wealth and happiness. In effect, the free access to office is chiefly valuable when it is a part of general freedom.

Aim of Government

37. ACT ESTABLISHING JUDICIAL COMMITTEE OF PRIVY COUNCIL,[1] 1833.

Privy Council's jurisdiction over British India

[Originally the Privy Council was a panel or organ of the *Magnum Concilium* or the Great Council of medieval England. In course of time it became the supreme Court of Appeal for all the King's lands beyond the seas. In 1726 the Charter of George I establishing the Mayor's Courts in the three Presidencies in India gave a right of appeal from those courts, first to the Governors in Council and thence to the Privy Council, in cases where the amount in dispute exceeded 1,000 pagodas, i.e., 4,000 rupees. By later enactments the Privy Council was empowered to hear appeals from the Supreme Courts and *Sadar* Courts of the three Presidencies. It appears that during the period 1774 1833 only 50 appeals were instituted Until 1833 the jurisdiction of the Privy Council was, in fact, exercised by such members of the Council as had held high judicial offices. The Act of 1833 created a committee, consisting of the members who should be holding, or have held, certain high judicial offices, and this committee was empowered to do the judicial work of the Council. Practically this committee was a court of law, but it maintained some administrative forms Technically it delivered no 'judgment' but merely tendered advice to the King An Order in Council was issued on the basis of this advice Only one opinion was expressed, and secrecy was insisted on. "These features form a curious reminder of the time when judicial and governmental functions were intimately blended, and the same council advised the King on acts of state and judicial business" [2]]

Preamble

........And whereas, from the decisions of various courts of judicature in the East Indies, and in the plantations, colonies and other Dominions of His Majesty abroad, an appeal lies to His Majesty in Council ; and whereas matters of Appeal or Petition to His Majesty in Council have usually been heard before a Committee of the whole of His Majesty's Privy Council who have made a Report to His Majesty in Council, whereupon it is expedient to make certain Provisions for the more effectual hearing and reporting on Appeals to His Majesty in Council and on other matters, and to give such powers and jurisdiction to His Majesty in Council as hereinafter mentioned :—

1 3 and 4 Will. IV, c. 41 ; August 14, 1833. See Cowell, *Courts and Legislative Authorities in India*, pp. 209-218.
2 Maitland, *Constitutional History of England*, p. 463.

Composition of the Judicial Committee

Be it enacted..........that the President for the time being of His Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of His Majesty's Privy Council as shall from time to time hold any of the offices following, that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy, and also all persons, Members of His Majesty's Privy Council, who shall have been President thereof or held the office of Lord Chancellor of Great Britain, or shall have held any of the other offices here-in-before mentioned, shall form a Committee of His Majesty's said Privy Council and shall be styled. "The Judicial Committee of the Privy Council" : Provided nevertheless, that it shall be lawful for His Majesty from time to time, as and when he shall think fit, by his Sign Manual, to appoint any two other persons, being Privy Councillors, to be members of the said Committee.

* * * *

Jurisdiction

3 And be it further enacted, that all Appeals or complaints in the nature of Appeals whatever, which, either by virtue of this Act, or of any Law, Statute, or Custom, may be brought before His Majesty or His Majesty in Council from or in respect of the Determination, Sentence, Rule, or Order of any Court, Judge, or Judicial Officer, and all such appeals as are now pending and unheard, shall from and after the passing of this Act be referred by His Majesty to the said Judicial Committee of his Privy

Council, and that such Appeals, Causes, and Matters shall be heard by the said Judicial Committee, and a Report or Recommendation thereon shall be made to His Majesty in Council for his decision thereon as heretofore, in the same manner and form as has been heretofore the Custom with respect to matters referred by His Majesty to the whole of his Privy Council or a Committee thereof (the nature of such Report or Recommendation being always stated in the open Court). Procedure

21. And be it further enacted, that the order or Decree of His Majesty in Council or any Appeal from the order, sentence, or Decree of any Court of Justice in the East Indies, or of any Colony, Plantation, or other His Majesty's Dominions abroad, shall be carried into effect in such manner, and subject to such limitations and conditions, as His Majesty in Council shall, on the recommendation of the said Judicial Committee, direct; and it shall be lawful for His Majesty in Council, on such recommendation, by order, to direct that such Court of Justice shall carry the same into effect accordingly, and thereupon such Court of Justice shall have the same powers of carrying into effect and enforcing such order or Decree as are possessed by or are hereby given to His Majesty in Council · Provided always that nothing in this Act contained shall impeach or abridge the powers, jurisdiction, or authority of His Majesty's Privy Council as heretofore exercised by such Council, or in anywise alter the constitution or duties of the said Privy Council, except so far as the same are expressly altered by this Act, and for the purpose aforesaid.

Decrees for courts abroad to be given effect as the King-in-Council shall direct

22. And whereas various appeals to His Majesty in Council from the Courts of Sudder Dewanny Adawlut at the several Presidencies of Calcutta,

Appeals from *Sadar Dewani Adalats* of Bombay, Madras, and Calcutta

Madras, and Bombay in the East Indies have been admitted by the said Courts, through the United Company of Merchants in England trading to the East Indies, to the office of His Majesty's said Privy Council, but the suitors in the causes so appealed have not taken the necessary measures to bring on the same to Hearing; be it therefore further enacted by the Authority aforesaid that it shall be lawful for His Majesty in Council to give such directions to the said United Company and other persons for the purpose of bringing to a hearing before the said committee the several cases appealed or hereafter to be appealed to His Majesty in Council from the several courts of Sudder Dewanny Adawult in the East Indies and for appointing Agents and Counsel for the different parties in such appeals, and to make such orders for security and payment of the costs thereupon, as His said Majesty in Council shall think fit; and thereupon such appeals shall be heard and reported on to His Majesty in Council, and shall be by His Majesty in Council determined in the same manner, and the Judgments, orders and decrees of His Majesty in Connoil thereon shall be of the same manner, and the Judgments, orders and decrees of His Majesty in Council thereon shall be of the same force and effect, as if the same had been brought to a hearing by the direction of the parties appealing in the usual course of proceeding: Provided always, that such last mentioned powers shall not extend to any Appeals from the said Courts of Sudder Dewanny Adawlut other than Appeals in which no Proceedings have been or shall hereafter be taken in England on either side for a period of two years subsequent to the admission of the Appeal by such Court of Sudder Dewanny Adawlut.

How these appeals are to be disposed of

24. And be it further enacted, that it shall be lawful for His Majesty in Council from time to time to make any such rules and orders as may be thought fit for regulating the mode, form, and time of Appeal to be made from the Decisions of the said Courts of Sudder Dewanny Adawlut, or any other Courts of Judicature in India or elsewhere to the Eastward of the Cape of Good Hope (from the decisions of which an Appeal lies to His Majesty in Council) and in like manner from time to time to make such other Regulations for Preventing Delays in the making or hearing of such Appeals and as to the Amount or Value of Property in respect of which any Appeal may be made.

King empowered to make rules and orders regarding appeals to Privy Council

38. MACAULAY ON PROCEDURE OF LAW-MAKING[1], 1835.

Mr. Prinsep[2] proposes that all the drafts of laws which are sent up by subordinate Governments shall, before they are laid before the Legislative Council, be considered by the Executive Council in the department to which they belong, that the Executive Council may amend them, that the Executive Council may frame and discuss within itself drafts of laws and then submit them to the Legislative Council, that all correspondence with all subordinate authorities, with the Law Commission and with the local Governments, shall be carried on through the Executive Council only..... ..I understand him to propose that the Executive Council of India shall be competent to perform all acts incidental to legislation except the final passing of a law. I have not the slightest hesitation in saying that this proposition is in the highest degree pernicious and directly opposed to the spirit and letter both of the Act of Parliament and of the instructions of the Court of Directors.

Prinsep's view about power of Executive Council regarding legislation

Macaulay opposed to Prinsep's view

If Mr. Prinsep's resolution be adopted, a draft of a law of the highest importance may be sent to

1 Minute, June 13, 1835. See Dharker, *Lord Macaulay's Legislative Minutes*, pp 22-32, 155-158.
2 A Member of the Governor-General's Council.

Calcutta by the Governor of Fort St. George in Council. The Executive Council may have this draft before them for a considerable time in the Judicial or Financial Department. Long minutes may be recorded on it by the Governor-General and by the three senior members of Council. Fresh information may be called for. Circulars may be sent all over the country. A copious correspondence may take place with the Madras Government. References may be made to the Law Commission and answers received. This may go on for six months. And during all this time, the fourth member of Council, sent to this country expressly for the purpose of legislation, solemnly reminded by the Court in their last dispatch that though all the members of the Council are entitled to propose and discuss laws, his time and faculties are to be peculiarly [devoted] to that department of public business, considered both here and at home as especially responsible for the manner in which the work of legislation is carried on, would have no right to see a single paper or to hear a single discussion, and would certainly be precluded from voting on any question and from recording any opinion.

While Executive Council discusses proposals for legislation Law Member may know nothing.

By the kindness of the late and the present Governor-General[1] and of my colleagues, I have been permitted to see every public document and to assist at every deliberation. But this may not always be the case. A Governor-General may be on bad terms with the fourth member of Council. Such a Governor-General would be borne out by the letter of the Act of Parliament in excluding the fourth member from all knowledge. Mr. Prinsep proposes to transfer to the Executive Department half the business of legislation. If this course be adopted, it will be in the power of the Governor-General to oust

Law Member cannot be ousted from 'the greater part of his legislative functions'.

1 Lord William Bentinck retired on March 20, 1835, and was ucceeded by Sir Charles Metcalfe.

the fourth member of Council from the greater part of his legislative functions. I deny both the expediency and legality of such an arrangement. I deny the expediency of admitting a person to vote on the passing of a law who has not been admitted to take part in all the preceding discussions on it. I deny the legal right of the Council of India to exclude the fourth member of Council while they are deliberating on the draft of a law in the Financial or Judicial Department. I claim for myself and my successors a legal right to record an opinion and to give a vote not merely on the final passing of a law, but on every question which may arise respecting a law in any of its stages. The Council, I trust, will not decide against this claim without a reference home.

Criticism of Prinsep's argument

I have done my best to make out the reasons on which Mr. Prinsep grounds his propositions. But I am quite at a loss to understand them. He says that the public authorities must not be taught to believe that they have two masters. That question is for a higher authority than ours. Parliament has thought fit to confide the executive government of India to one body, and the supreme legislative power to another body. If this be an evil, let us apply to the home authorities to rid us of it............But as the law now stands the Indian Empire has two masters, and we cannot repeal the law. There is a supreme Executive Council and a supreme Legislative Council and, whether this be a convenient arrangement or not, we cannot lawfully transfer the functions of the supreme Legislative Council to the Executive Council.

Functions of Legislative Council cannot be transferred to Executive Council.

Mr. Prinsep proceeds thus: 'Suppose, too, an order from the Legislative Council should be neglected or disobeyed, whence is the punishment to come? If the Legislative Council were to take the enforcement of its orders on its own hands, it would soon become an Executive Council, and the functions of

the different branches of the Government would be confounded.'

Criticism of Prinsep's fear that Legislative Council may encroach on business of Executive Council

The danger then is that the functions of the executive and the legislative branches of the Government should be confounded. And the remedy is to jumble them together in inextricable confusion. That the Legislative Council should become an Executive Council would be a frightful evil. But that the Executive Council should become a Legislative Council is no evil at all. And how does Mr. Prinsep's proposition meet the difficulty which he has raised? Suppose that his rules are adopted. The Legislative Council wants information on some questions. It applies to the Executive Council. The Executive Council neglects to procure the information. Whence is punishment to come? How is the information to be procured? If the Legislative and Executive Councils differ, this case might easily arise. If on the other hand they always agree, there is an end of the argument about the two masters. The right course seems to me very obvious. When Parliament gave us the power of legislating it gave us also, by necessary implication, all the powers without which it is impossible to legislate well. I see no reason why the Legislative Council may not correspond directly with the subordinate Governments and with the Law Commission, why it may not directly call for information from any public functionary, why it may not, if it is considering a draft of a law on a military or financial subject, require the attendance of the military or financial secretary. In no Government would I sacrifice substantial convenience to forms. Least of all would I make such a sacrifice in a Government so new as this, in a Government which owes nothing to ancient associations.

Macaulay's view on powers of Legislative Council

If however it be the opinion of gentlemen more experienced than myself that there would be any

advantage in interposing the Executive Council as a mere organ of communication between the legislature and other bodies, though I must own that I do not conceive that the dignity of the Executive Council would be raised by such a course and though I fear that much delay and inconvenience would result from it, I will not press my objections. But in that case it will be fit that the Executive Council should be merely an organ of transmission, that its letters should be mere echoes of the communications made to it by the legislature, and that it should instantly transmit to the legislature every paper relating to legislation which might be sent to any executive department. Thus far I am ready to go. But that the Executive Council should, as Mr. Prinsep proposes, take on itself the greater part of the business of legislation would be, I again repeat, a most reprehensible course. It would be in the highest degree inexpedient. It would be a direct violation of the Act of Parliament. It would be a direct violation of the latest order received from the Court of Directors. Nor would there be, as far as I can perceive, a single compensatory advantage to set off against these objections.

Should Executive Council be 'merely an organ of transmission' regarding law-making?

39. ELLENBOROUGH ON GOVERNOR-GENERAL'S COUNCIL.

[Lord Ellenborough's interpretation of Section 40 of the Charter Act of 1833, relating to the position of the 'Fourth Ordinary Member of Council,' should be read along with the views of the Court of Directors explained in paras 21-23 of the Despatch of 1834]

I. Letter to Lord Auckland, September 19, 1841.

It appeared to me when I was at this office before[1], that you were in want of some officer in

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1 Lord Ellenborough held the Presidency of the Board of Control on four occasions: September, 1828—November, 1830 (Wellington's Cabinet); December, 183 —April, 1835 (Peel's Cabinet); September-October, 1341 (Peel's Cabinet); February-May, 1858 (Derby's Cabinet).

Governor-General should have a Financial Minister.

India whose duties should be similar to those of the Chancellor of the Exchequer here............My idea was and is, that the general superintendence of the finances would be better entrusted to a person not educated in the Company's service, but formed to habits of business here, and it has occurred to me that the Member of Council now only authorised to attend the meetings of Council when legislative measures are before it, might be permitted to attend when matters of revenue and finance are before it, and might be made your Financial Minister

Law Member may act as Financial Minister.

* * * *

Members of Council should be made heads of departments.

One of my former plans was to make the several Members of Council in practice, as they once, I believe, used to be, heads of departments—in fact the Governor-General's Secretaries of State. I should be glad to know your views upon this point. My idea is that all business is ill-transacted by Boards, and that the secret of efficient administration is in individual responsibility. The Members of Council made Heads of Departments would still be the Governor-General's Cabinet.

II. Minute, February 18, 1844.

Instructions of Court of Directors regarding Law Member

The Court of Directors in their letter dated the 29th of November, 1843, have intimated their desire that the presence of the fourth member of Council may not be restricted to meetings held for the purpose of passing Laws and Regulations, but have at the same time cautioned us to bear in mind that at such meetings only is he entitled to a voice in our proceedings.

It is impossible to regard this otherwise than as a mere expression of the opinion and wish of the Court. If the words used could be regarded as conveying a "direction," by virtue of such direction the 4th Member of Council would become *entitled* to

sit at meetings not held for the purpose of passing Laws and Regulations; but the last Charter Act expressly provides that the 4th Member of Council shall not be *entitled* to sit or vote in the Council except at meetings thereof for making Laws and Regulations; therefore any such "direction" given by the Court would be altogether invalid because inconsistent with the Act of Parliament, from which alone the Court derive their authority. The Council of India as established by Act of Parliament is as much a part of the Constitution of India as the Court of Directors and it is the duty of the Council to guard with jealousy all its rights, to resist all infringements of its powers and above all to treat as utterly null every direction which if obeyed would change its composition. Considering however that the Court can only have intended to convey an intimation of their opinion and of their wish, and not to send a direction which they are not by law competent to give, we may properly show our respect for the opinion of the Court by carrying into effect their wish that the 4th Member of Council should sit at meetings of the Council not held for the purpose of making laws and regulations in as far as it may appear that his presence may not be injurious to the public service; but it may at all times be borne in mind that above all things secrecy in Council and promptitude in action are essential to the successful conduct of public affairs in India; and it must also be understood that any individual member of the Council may, at any time if he shall see fit, require that any person shall withdraw from the Council who is not entitled to sit therein by the Acts of Parliament.

Interpretation of Court's instructions

How to give effect to Court's instruction

40. ELLENBOROUGH[1] ON COURT OF DIRECTORS, 1844.

[Lord Curzon observed, "With better judgment and less vanity Ellenborough might have been a considerable ruler, for he had conspicuous talents, and I remember Mr. Gladstone telling me that he thought him the best speaker of his day in the House of Lords. As it is, he was the shortest-lived and the least successful of all the Governors-General". It is said that the main reason of the hostility of the Court of Directors to Lord Ellenborough was his attempt to exalt the army at the expense of the Civil Service : "...the civil administration of the country (i. e., India) was the patrimony of the Directors, and afforded a rich provision for their relatives and all having interest with them. Of course the Civil Service was accordingly a favoured service......Deserving soldiers were given appointments (by Lord Ellenborough) hitherto reserved for the proteges of the Court, and the whole interest of the Court and Civil Service turned against him. He may have gone too far, as Kaye contends, and exalted the army unduly at the expense of the civilians; but the most moderate reforms in that direction would have been sufficient to arouse the undying hostility of the privileged class. 'The selection of military men', wrote the Court, 'for important offices previously held by civilians can hardly fail to impair the efficiency of the Civil Service of India'. This was the head and front of Lord Ellenborough's offending, and this led to his recall. His successors, Lord Hardinge and Lord Dalhousie, were always most careful to avoid any such mistake ; and they were consequently enabled to carry, without opposition, measures which in Lord Ellenborough's time would certainly have been denounced by the authorities in Leadenhall Street."]

Court—nothing more than a channel of communication between Governor-General and Board of Control

2. Your Honourable Committee must be too well acquainted with the Act of Parliament which regulates the Government of India not to be aware that it is my duty to pay regard only to the orders of the Court sanctioned by Her Majesty's Commissioners for the Affairs of India. Of the opinion entertained by the Court itself, I can constitutionally have no

1 Letter to Secret Committee, January 18, 1844. For a favourable view of Lord Ellenborough's administration see H. M. Durand, *Life of Sir Henry Durand*, Chapter IV.

knowledge. I only know the Court as the channel through which it has pleased Parliament to provide that the orders of the supreme authority in England shall be conveyed to India ; but that supreme authority does not reside in the Court itself It resides altogether in Her Majesty's Commissioners for the Affairs of India who are empowered to alter as they may think fit every order the Court may desire to transmit, and to direct the transmission of orders of which the Court may unanimously disapprove[1].

3. It is true that while Parliament has provided that all the measures of the Indian Government shall be thus practically under the sole control of Her Majesty's Commissioners, it has left to the Court the independent power of evincing its real disapproval of the measures to which, under the control of the Commissioners, it may have signified its sanction, by removing from his office the Governor-General with whom those measures may have originated.

4. It is not for me to question the wisdom of this provision, but it is evident that it may be so exercised as to effect the removal from office in the midst of great public difficulties, of the person by whom it may be the opinion of the supreme authority in England, that those difficulties can be most successfully encountered.[2]

Court's power of recalling Governor-General

41. CHARTER ACT[3], 1853.

[When the term of the Charter of 1833 was about to expire, the authorities in London asked Lord Dalhousie to give them his opinion on the changes to be introduced. The

1 Sir Robert Peel, Prime Minister of England, wrote in a private letter on February 20, 1842, "The Court (of Directors) is becoming a very troublesome body, mainly from the want of efficient control. They presume upon the absence of it, and encroach accordingly "

2 Lord Ellenborough himself was recalled by the Court of Directors without the approval of the Board of Control.

3 16 and 17 Vict., c. 95.

Governor-General wrote 'a masterly essay' consisting of 167 paragraphs, dated October 13, 1852, and entitled 'The Government of India'. He strongly advocated the retention of the supreme control vested in the Governor-General in Council, but such control was not to be "exerted in petty interference with the local administration of the Presidencies". Lord Dalhousie also supported the Governor-General's right to overrule his Council, pointing out that his "responsibility to the Court, to Parliament, and to the Crown afforded a full guarantee that this great power will never be exercised without very weighty reasons" He pleaded for the entire reconstruction of the Legislature. The Civilian members of the Council, who were usually taken from the Bengal Service, "could know nothing about the local legislation required for Madras and Bombay, and have no skill in the technical difficulties which attach to legislative enactments", Neither the Commander-in-Chief nor the military member of Council could "by any possibility know anything about the matter". The Governor-General was too busy with executive duties to pay much attention to legislation. Even the fourth member, 'although profoundly versed in English law, is as profoundly ignorant of all laws prevailing in India, whether Hindu, Mahomedan, regulations or acts. He knows absolutely nothing of the inhabitants, the tenures, the practice or the habits of the country to which he comes, and from which he is probably withdrawn when he has mastered these difficulties". Lord Dalhousie's plan was to associate with the Executive Council (which, he thought, should be recruited not from Bengal only, but from the three Presidencies) extra members, including Judges of the Supreme Court, a member of the Board of Revenue, and the Advocate-General. He also suggested that the Governor-General should be relieved of the charge of the local affairs of Bengal, which should be placed under a Lieutenant-Governor. On June 8, 1853, Sir Charles Wood wrote to him, "We take, I think, all your suggestions for India, except enacting in plainer form your powers and those of the Governors of the Presidencies when absent......we thought it wiser not to attempt this, lest we should have limitations forced on us."[1]]

Dalhousie on Executive Council

Dalhousie on legislation

Dalhousie on administration of Bengal

I Extracts from Act

An Act to Provide for the Government of India, August 20, 1853.

1 See Lee-Warner, *Life of Dalhousie*, Vol. II, pp. 218-233

Suspension of the provision for creating Presidency of Agra

15. The provisions of the said Act of the Third and Fourth Years of King William the Fourth, relating to the Division of the Presidency of Fort William in Bengal into Two Presidencies, and to the Measures consequent thereupon, which have been suspended under the Authority of the Act of the Session holden in the Fifth and Sixth Years of King William the Fourth, Chapter Fifty-two, shall remain suspended until the Court of Directors, under the Direction and Control of the Board of Commissioners for the Affairs of India, shall otherwise direct; and during the Continuance of such Suspension the Provisions of such last mentioned Act, authorizing the Appointment of a Lieutenant-Governor for the North-Western Provinces, then under the Government of the Presidency of Fort William in Bengal, and the Appointments and Arrangements made thereunder, shall remain in full force.

Provisions for the appointment of a separate Governor for Bengal

16. It shall be lawful for the said Court of Directors, under such Direction and Control as aforesaid, if and when they think fit, at any Time after the passing of this Act, to declare that the Governor-General of India shall not be Governor of the Presidency of Fort William in Bengal, but that a separate Governor shall be appointed for such Presidency and in such Case a separate Governor shall be from Time to Time appointed for such Presidency accordingly, in manner provided by the said Act of the Third and Fourth Years of King William the Fourth, in the Case of Vacancies happening in the Offices of the Governors of the Presidencies of Fort Saint George and Bombay; and from and after the Appointment of such Governor, the Power by the said Act vested in the Governor-General of India of appointing a Deputy Governor of the said Presidency of Fort William in Bengal shall cease; and unless and until a separate Governor of such Presidency shall be constituted as

aforesaid, it shall be lawful for the Court of Directors, under such Direction and Control as aforesaid, if and when they think fit, at any Time after the passing of this Act, to authorize and direct the Governor-General of India in Council to appoint from Time to Time any servant of the said Company who shall have been Ten years in their Service in India to the Office of Lieutenant-Governor of such Part of the Territories under the Presidency of Fort William in Bengal as for the Time being may not be under the Lieutenant-Governor of the said North-Western Provinces, and to declare and limit the Extent of the Authority of the Lieutenant-Governor to be so appointed.

Provision for the appointment of a Lieutenant-Governor for Bengal

Court of Directors empowered to create a new Presidency

17. It shall be lawful for the Court of Directors of the said Company, under such Direction and Control, if and when they think fit, to constitute One new Presidency within the Territories subject for the Time being to the Government of the said Company, and to declare and appoint what part of such Territories shall be subject to the Government of such new Presidency; and unless and until such new Presidency be constituted as aforesaid, it shall be lawful for the said Court of Directors, under such Direction and Control as aforesaid, if and when they think fit, to authorize (in addition to such Appointments as are hereinbefore authorized to be continued and made for the territories now and heretofore under the said Presidency of Fort William) the appointment by the said Governor-General in Council of a Lieutenant-Governor for any Part of the Territories for the Time being subject to the Government of the said Company, and to declare for what part of the said Territories such Lieutenant-Governor shall be appointed, and the Extent of his Authority, and from Time to Time to revoke or alter any such Declaration.

Provision for the creation of a new Lieutenant-Governorship

18. It shall be lawful for the said Court of

Directors, under such Direction and Control as aforesaid, from Time to Time to declare and appoint what Part or Parts of the Territories for the Time being subject to the Government of the said Company shall be or continue subject to each of the Presidencies and Lieutenant-Governorships for the Time being subsisting in such Territories, and to make such Distribution and Arrangement or new Distribution and Arrangement of such Territories into or among such Presidencies or Lieutenant-Governorships as to the said Court of Directors, under such Direction and Control as aforesaid, may seem expedient.

Court of Directors empowered to define and alter limits of Presidencies and Lieutenant-Governorships

19. The Provisions of the said Act of the Third and Fourth Years of King William the Fourth, as amended by this Act, and all other Provisions now in force for the Administration of the Executive Government of the Presidencies of Fort Saint George and Bombay respectively, and authorizing the Revocation and Suspension of the Appointment of Councils and the Reduction of the Number of Councillors in such Presidencies respectively, and as to the Powers, Duties, Functions, and Immunities of the Governors of such Presidencies respectively, and of such Governors in their respective Councils, and concerning or applicable to the Appointment and provisional Appointment of Governors and Members of Council of the said Presidencies respectively on Vacancies, and otherwise providing for Vacancies in the office of any such Governor, and concerning the Removal and Dismissal of such Governors and Members of Council, and the Revocation of Appointments and provisional Appointments of Governors and Members of Council of such Presidencies, and concerning the Salaries and Emoluments of such Governors and Members of Council, shall extend and be applicable in like Manner to and in the Case of any new Presidency to be established as aforesaid under this Act, and also to and in the

All laws applicable to existing Presidencies will be applicable to newly created Presidencies.

Case of the Presidency of Agra, in case the same be constituted under the Provisions of the said Act of the Third and Fourth Years of King William the Fourth; and the said Provisions concerning Appointments of Governors and Members of Council on Vacancies, as amended by this Act, shall extend and be applicable to and for the first Appointment of a Governor and Members of Council of such new Presidency and the Presidency of Agra aforesaid.

Appointment of Councillors subject to Queen's approval

20. Every Appointment by the Court of Directors of any ordinary Member of the Council of India, or of any Member of the Council of any Presidency in India, shall be subject to the Approbation of Her Majesty, to be signified under her Royal Sign Manual countersigned by the President of the Board of Commissioners for the Affairs of India.

Removal of disability of Fourth Ordinary Member of Council

21. So much of the said Act of the Third and Fourth Years of King William the Fourth as provides that the Fourth Ordinary Member of the Council of India shall not be entitled to sit or vote in the said Council, except at Meetings thereof for making Laws and Regulations, shall be repealed.

Extension of Council for better law-making

22. For the better Exercise of the Powers of making Laws and Regulations, now vested in the Governor-General of India in Council, the several Persons hereinafter mentioned shall in addition to and together with such Governor-General and the Members of the said Council, under the said Act of the Third and Fourth Years of King William the Fourth, be Members of the said Council of India for and in relation to the Exercise of all such Powers of making Laws and Regulations as aforesaid, and shall be distinguished as Legislative Councillors thereof; (that is to say),

'Legislative Councillors'

One member for each Presidency and Lieutenant-Governorship for the Time being established in the said Territories, to be appointed from Time to

Time by the Governor of such Presidency and the Lieutenant-Governor of such Lieutenant-Governorship respectively, from among the Persons having been or being at the Time of their Appointment in the Civil Service of such Company within such Presidency or Lieutenant-Governorship, and who shall have been Ten Years in the Service of the said Company :

Composition of Legislative Council

The Chief Justice of the Supreme Court of Judicature at Fort William in Bengal, or the Chief Justice or Chief Judge of any Court of Judicature hereafter to be constituted in the said Territories to or in which the Powers of such Supreme Court may be transferred or vested :

One of the other Judges of such Supreme Court, or One of the Judges appointed by Her Majesty of any such future Court as aforesaid, to be named by the said Governor-General.

And it shall be lawful for the Court of Directors, if they think it expedient, under the Direction and Control of the Board of Commissioners for the Affairs of India, to authorize and direct the Governor-General of India to appoint from time to time, in addition to such Legislative Councillors as aforesaid, Two Persons, to be selected by the said Governor-General, having been Ten Years in Service of the Company, to be Legislative Councillors of the said Council under this Act : Provided always that the Legislative Councillors added to the Council of India by or under this Act shall not be entitled to sit or vote in the said Council, except at Meetings thereof for making Laws and Regulations.

Disability of the 'Legislative Councillors'

23. It shall be lawful for such Governor-General to appoint any Member of the said Council to be Vice-President thereof at Meetings of the said Council for making Laws and Regulations who shall preside therein at such Meetings in the Absence of such Governor-General, and in the Absence of such

President and Vice-President of Council for law-making

Vice-President the senior ordinary Member of the Council of India there present shall preside therein ; and the Powers of making Laws or Regulations vested in the said Governor-General in Council shall be exercised only at meetings of the said Council, at which such Governor-General or Vice-President or some Ordinary Member of Council, and Six or more Members of the said Council, shall be assembled, the Chief Justice, or Chief Judge, or such other Judge of the Supreme Court or such other Court as aforesaid, or the Fourth Ordinary Member of the said Council of India, being One ; and in every Case of Difference of Opinion at Meetings of the said Council for making Laws and Regulations, where there shall be an Equality of Voices, the Governor-General, or in his Absence the Vice-President, and in the absence of the Governor-General and the Vice-President such senior ordinary Member of Council there present and presiding, shall have Two Votes or the Casting Vote.

Quorum for law-making

Casting vote

24. Provided always, that no Law or Regulation made by the said Council shall have Force or be promulgated until the same has been assented to by the said Governor-General, whether he shall or shall not have been present in Council at the making thereof.

Governor-General's assent required for validity of laws

26. No Law or Regulation made by the Governor-General in Council shall be invalid by reason only that the same affects any Prerogative of the Crown, provided such Law or Regulation shall have received the previous Sanction of the Crown, signified under the Royal Sign Manual of Her Majesty, countersigned by the President of the Board of Commissioners for the Affairs of India.

Laws affecting Prerogative of the Crown

33. And whereas by the said Act of the Third and Fourth Years of King William the Fourth it is

enacted, that the President of the Board of Commissioners for the Affairs of India, but no other Commissioner, as such, and the Secretaries and other Officers, shall be paid by the said Company such fixed salaries as His Majesty shall, by any Warrant or Warrants under his Sign Manual, countersigned by the Chancellor of the Exchequer for the Time being, direct: Be it enacted, that such fixed Salary of the said President of the Board of Commissioners shall in no Case be less than the Salary which shall be paid to One of Her Majesty's Principal Secretaries of State; and that only one of the said Secretaries to the said Board shall be capable of being elected or sitting and voting in Parliament.

Salary of President of Board of Control

Only one Secretary to Board of Control eligible to Parliament

* * * *

35. There shall be paid to the several Officers hereinafter named the several annual Salaries set against the Names of such Officers respectively, subject to such Reduction as the Court of Directors, with the Sanction of the said Board, may from Time to Time think fit: (that is to say),

Salaries of officials in India

To the Commander-in-Chief of the Forces in India, One hundred thousand Company's Rupees, in lieu of all other pay and allowances:

To each Lieutenant-Governor, One hundred thousand Company's Rupees:

To each ordinary Member of the Council of India, Eighty thousand Company's Rupees:

To each Legislative Councillor of the Council of India (not holding any other Office), Fifty thousand Company's Rupees:

The several Salaries aforesaid to be subject to the Provisions and Regulations of the said Act of the Third and Fourth Years of King William the Fourth, concerning the Salaries thereby appointed: Provided always, that the Salary of any such Officer appointed before the passing of this Act shall not under this Enactment be reduced.

II. Sir Charles Wood's Speech[1] On Charter Act, 1853.

Relative positions of Governor-General and Council unchanged

..........I need not trouble the House with any lengthened remarks upon the subject of the position of the Governor-General, because, according to the concurrent testimony of all the witnesses, there is not much change required. Lord Dalhousie is of opinion that no change is necessary[2]. The questions that have arisen on more than one occasion as to the relative powers of the Governor-General and his Council have been settled by the opinions of the law officers here, and the orders which have been sent from the Court of Directors; and it seems quite unnecessary to make any change in this respect. The only alteration in the position of the Governor-General which we propose to make is this. It appears from the whole of the evidence, that, en-

1 House of Commons, June 3, 1853.

The speech lasted more than five hours. Large portions of the speech were taken direct from Lord Dalhousie's essay entitled "The Government of India", dated October 13, 1852. Sir Charles Wood wrote to Lord Dalhousie on June 8, 1853. "......so far it (*i. e.*, the Bill) has been well received, except, of course, by Bright and Young India, whom nothing will satisfy but breaking the Directors." The Bill passed through the House of Commons, without substantial changes, on July 29, 1853. See Lee-Warner, *Life of Dalhousie*, Vol. II, pp. 222, 232.

2 Lord Dalhousie wrote in a private letter on July 10, 1852. "......I believe, if they examine deliberately, they will find little to alter of moment. The Government of Bengal, however, is an exception to this observation, and I earnestly hope they will effect a change there. I have constantly urged it for several years." When a Lieutenant-Governor took charge of Bengal (April 29, 1854) Lord Dalhousie wrote, "......I am conscious the transfer will be a great relief to me. It will be a great benefit, too, to the province, although on reviewing the two years during which I have administered it, I find no reason to be ashamed of myself."

trusted as he is both with the Government of India and the Government of Bengal, he has more duties to attend to than he can fairly discharge We propose, therefore, to relieve him of the administration of the province of Bengal.[1] But we do not propose that any change should be made in the general control which he exercises over the whole of the Indian Government. Complaints have been made by some witnesses on behalf of the Presidencies, of the unnecessary check on useful expenditure which they say is imposed upon them by the Governor-General. But this does not appear to be borne out by the facts. ....Perhaps the existing limit on the expenditure to be incurred by the Governors of the minor Presidencies might be somewhat extended ; but it should not be forgotten that the wasteful expenditure incurred by these Presidencies before the Act of 1833, was one of the main reasons stated by Lord Glenelg[2] for the change in the Government of India, rendering absolutely necessary the control on the part of the Supreme Government.

Governor-General relieved of administration of Bengal

Control of Governor-General over expenditure of Local Governments

Another point has been raised as to the absence of the Governor-General from Calcutta without his Council. That, again, I think, is a matter for discretion, and not for legislation. There are cases where it is desirable that the Governor-General should leave Calcutta. When Lord Hardinge, for example, went up with the army, it was clearly for the benefit of India that he should do so ; and when Lord Dalhousie went up to the Punjab,[3] it was also clearly for

Governor-General's separation from Council

1 The Government of India Act, 1854 (17 and 18 Vict., c. 77), provided (clause 5) that the Governor-General "shall no longer be the Governor of......Bengal."

2 Charles Grant, President of the Board of Control.

3 Lord Dalhousie wrote in a private letter on April 1, 1850, "I daily awake more and more to the consciousness that the place of the G.-G. is here with the Council, if any measures of internal improvement are to be prosecuted. Politica

Division of power between Governor-General and Council

the interest of India that he should be there and not at Calcutta........When the Governor General goes away from Calcutta on such occasions, he generally takes with him, as it is called, the political and military powers, which enable him to direct the political movements in India ; but he leaves with his Council at Calcutta all the powers necessary for conducting the general administration of India. This portion of the duty of the Supreme Government they are perfectly competent to perform, and the inconvenience and interruption to business is avoided, which would inevitably result from moving the Council and all its attendant functionaries from the permanent seat of Government at Calcutta........no fixed regulations can be laid down which might not subject both the Governor-General and the Empire to considerable inconvenience.

Law Member

With regard to the Executive Council, we propose no change[1] except that the members shall be named by the Court of Directors, with the check of the approbation of the Crown ; and that the fourth Ordinary Member, or the "legislative councillor", as he is called, shall sit and vote upon all subjects brought under the consideration of the Council.

considerations must carry me to the north just now, but I see all the disadvantages of it to the other provinces, and I doubt I could not satisfy my conscience if I did not return here before the hot weather of 1851."

1 Lord Dalhousie was satisfied with his Council. He wrote in a private letter on April 16, 1850, 'They are most willing to aid, and show every symptom of personal good will that I could wish." There were some differences between Lord Dalhousie and the Council regarding the annexation of Oudh, but a unanimous conclusion followed personal discussion. We read in one of his private letters, dated January 13, 1856, "All four members of Council in their minutes recorded different views. All have come to a unanimous conclusion now. By giving in a little myself they have given in too, and we have arrived at an agreement in which we are all cordial

The evidence is uniformly in favour of the establishment of a permanent Lieutenant-Governor in Bengal. The interests of the Presidency are stated in many cases to have suffered from the want of a permanent officer superintending the various matters connected with its administration[1]; and as it is desirable to relieve the Governor-General of the labour of this duty, and will clearly be to the advantage of the district, we propose that power should be taken to appoint a Lieutenant-Governor of Bengal. The evidence is, I think, in favour of maintaining the other Presidencies as they are at present I think there is considerable advantage in sending out to these Governments statesmen from England. The position of the Governors there is very different from that of the Lieutenant-Governor in the Upper Provinces There is a large European population both at Bombay and Madras, a separate civil service, distinct armies, separate courts of judicature, and it is essential, I think, that the Governors in these places should be in a somewhat higher position than that of Lieutenant-Governor, and therefore we propose to leave these Presidencies with their Governors and their Councils as they stand, the appointment of

Lieutenant-Governor of Bengal

No change required in Madras and Bombay

and ore This is the effect of doing the work by personal discussion in Council Had we proceeded by way of minutes, I doubt whether we should ever have come to a unanimous decision at all ; while *any* decision would probably have cost us eight weeks instead of eight days"

1 Lord Dalhousie severely criticised the system under which the Governor-General or his Deputy, being a member of his Council, was charged with the administration of Bengal. In his essay entitled "The Government of India", dated October 13, 1852, he wrote, "The Deputy has always in practice been President of the Council also Thus his undivided attention can no more be given to the local affairs of Bengal than can that of the Governor-General. The Deputy Governor cannot leave Calcutta to visit the districts ; for if he does he stops the business of the general Government and of legislation......And so great are the anomalies which have influenc-

Dalhousie on administration Bengal

Governor being open, as now, either to Indian servants or to statesmen from this country. Lord W. Bentinck, one of the best of our Governors-General, had the advantage of having been at an early period Governor of Madras[1]. We propose to continue the present power of having a Governor, or a Lieutenant-Governor, in the North-Western Provinces and we propose also to take power of creating, if it should hereafter be found desirable, a new Presidency or Lieutenant-Governorship in India[2]; and power also to regulate and alter from time to time the boundaries and limits of the respective Presidencies or Lieutenant-Governorships. In taking this power, I am looking, of course, to the large districts of the Punjab and the provinces of the Indus, which have been added to our territories since 1833; but I wish to leave it open to the Government to make any arrangement of the Provinces which may, after full consideration, be found most convenient for their administration........

N. W. P.

Provision for a new Presidency or Lieutenant Governorship

Punjab and Sind

.... the evidence, as far as it has been taken, is that it would not be desirable to place natives in the Council.

Indians not to be admitted to Council

Legislation

I come now to matters of legislation and legal reforms. With respect to the Law Commission

ed the fate of this valuable and important province, that for three and a half out of these twelve years of deputed rule the functionaries, in whom was deposed the entire civil administration of Bengal, have been veteran generals of the Bengal and Madras armies!" He added, "The civilians in Bengal are as able as their brethren in Agra, and the country as capable of improvement, but the best man cannot exert himself for long with a good heart if no superior authority ever sees the result of his labours......" (Lee-Warner, *Life of Dalhousie*, Vol. II, p. 246).

1 For the historical connction between Madras and the post of Governor-General, see Lord Curzon, *British Government in India*, Vol. II, pp. 78-82, 84, 88.

2 The Government of India Act, 1854 (17 and 18 Vict., c. 77) provided (clause 3) that the Governor-General in

appointed in 1833, I have stated that no practical result followed from their labours, and that there are great defects in the law of India as it now stands. We think it very desirable that the mass of Reports and partly framed Acts which remain of the labours of that Commission should be put into a shape to be practically useful....... The legislation of India must take place in India, and for that purpose we propose to improve and to enlarge the Legislative Council.

Legislative Council

........It was stated by Lord Ellenborough, in his evidence, that great inconvenience frequently arose in consequence of there being no member of the Legislative Council at Calcutta who knew any thing of the manners and customs of other parts of India. This inconvenience will be removed by the selection of members from the other Presidencies; and although it is not proposed that these members shall have seats in the Executive Council, there will be this further advantage, that they will supply information to the Governor-General and his Council in their executive capacity as to all matters connected with those parts of the country from which they come. The members of the civil service will bring with them that intimate acquaintance with the manners and customs of the people of India which is so requisite towards promoting sound legislation. There will also be the advantage of having in the

Members from other Presidencies in Legislative Council

Judges in Legislative Council

Council might, with the sanction of the Court of Directors and the Board of Control, "take under the immediate authority and management of the said Governor-General of India in Council any part or parts of the Territories for the time being in the possession or under the government of the said Company, and thereupon give all necessary orders and directions respecting the administration of such part or parts of the said Territories, or otherwise to provide for the administration thereof." This provision led to the appointment of Chief Commissioners, to whom the Governor-General in Council delegated such powers as they thought fit.

Chief Commissioners

Council three persons of legal education from England, two of the judges of the Supreme or other Superior Court, and the Legislative Councillor. I hope that the result of this will be to introduce that improved spirit of legislation with which it is probable all those going from this country to India will be thoroughly imbued ; and with this admixture of English legal knowledge and skill, and of the intimate acquaintance possessed by the Indian civil servants of the customs and manners and wants of the different parts of India, we trust that a legislative body will be constructed fully equal to the discharge of its high and important duties. We propose to give the Governor-General a veto on their legislation, which he possesses indeed now when absent from his Council, but not when present.

Governor-General's veto on legislation

42. MACAULAY ON COMPETITIVE SYSTEM FOR COMPANY'S CIVIL SERVICE

[The system of restricted competition proposed in 1833 never came into force. Lord Ellenborough, who succeeded Charles Grant as President of the Board of Control, 'regarded the new scheme as clumsy and the method of selection by examination as suspect'. So he did not put the scheme into operation. In 1837 his successor, Hobhouse, secured for the Board of Control, through an amending Bill, permissive authority to introduce the scheme proposed in 1833, but he had no intention to interfere with the old system. Thus the Directors, with, the connivance of the Board, 'cleverly and quietly cheated Parliament, and they retained their patronage until 1853.'[1]]

1. Speech on Sir Charles Wood's Bill, 1853.

........There is something plausible in the proposition that you should allow him (the Governor-General) to take able men wherever he finds them. My firm opinion is that the day on which the Civil

1 See C. H. Philips, *The East India Company*, pp. 296-297.

Service of India ceases to be a close service will be a beginning of an age of jobbing—the most monstrous, the most extensive, and the most perilous system of abuse in the distribution of patronage we have ever witnessed. Every Governor-General would take out with him, or would soon be followed by, a crowd of nephews, first and second cousins, friends, sons of friends and political hangers-on; while every steamer arriving from the Red Sea would carry to India some adventurer bearing with him testimonials from people of influence in England. The Governor-General would have it in his power to distribute Residencies, seats at the Council Board, places of from £4000 to £6000 a year upon new men without the least acquaintance with the characters and habits of the natives, and with only such knowledge of language as would enable them to call for another bottle of pale ale or desire their attendant to pull the *punkah* faster. In what way could you put a check on such proceedings? Would you, the House of Commons, control them? Have you been so successful in extirpating nepotism at your own door, and in excluding abuses from Whitehall and Somerset House, that you should fancy that you could establish purity in countries the situation of which you do not know, and the names of which you cannot pronounce? I believe most fully that, instead of purity resulting from that arrangement to India, India itself would soon be tainted; and then before long, when a son or brother of some active Member of this House went out to Calcutta, carrying with him a letter of recommendation from the Prime Minister to the Governor-General, that letter really would be a bill of exchange, drawn on the revenues of India for value received in Parliamentary support in this House.

Disastrous consequences of proposal to allow Governor-General to take able men wherever he finds them

House of Commons cannot control abuse of Governor-General's patronage

We are not without experience on this point.

We have only to look back to those shameful and lamentable years which followed the first establishment of our power in Bengal. If you turn to any poet, satirist, or essayist of those times, you may see in what manner that system of appointment operated. There was a tradition in Calcutta that, during Lord Clive's second administration, a man came with a strong letter of recommendation from one of the Ministers Lord Clive said in his peculiar way, "Well, chap, how much do you want?" Not being accustomed to be spoken to so plainly, the man replied that he only hoped for some situation in which his services might be useful. "That is no answer, chap," said Lord Clive. "How much do you want? Will a hundred thousand pounds[1] do?" The person replied that he should be delighted if, by laborious service he could obtain that competence. Lord Clive at once wrote out an order for that sum, and told the applicant to leave India by the ship he came in, and, once back in England, remain there. I think that the story is very probable, and I also think that India ought to be grateful for the course which Lord Clive pursued; for, though he pillaged the people of Bengal to enrich this lucky adventurer, yet, if the man had received an appointment, they would have been pillaged and misgoverned as well. Against evils like these there is one security and, I believe, but one; and that is that the Civil Service should be kept close.

Story about Clive

If I understand the opinions imputed to the noble Lord (Lord Ellenborough), he thinks that the proficiency of a young man in those pursuits which constitute a liberal education is not only no indication that he is likely to make a figure in after life, but

Ellenborough's view of competition

1 It was probably "rupees".

that it positively raises a presumption that he will be passed by those whom he overcame in those early contests. I understand that the noble Lord holds that young men who gain distinction in such pursuits are likely to turn out dullards, utterly unfit for an active career; and I am not sure that the noble Lord did not say that it would be wiser to make boxing and cricket a test of fitness than a liberal education. It seems to me that never was a fact proved by a larger mass of evidence, or a more unvaried experience than this: that men who distinguish themselves in their youth above their contemporaries almost always keep to the end of their lives the start which they have gained. Take down in any library the *Cambridge Calender*. There you have a list of honours for a hundred years. Look at the list of the wranglers and of junior optimes; and I will venture to say that, for one man who has in after life distinguished himself among the junior optimes, you will find twenty among wranglers. Is not our history full of instances which prove this fact? Look at the Church, or the Bar. Look at Parliament, from the time that Parliamentary Government began in this country; from the days of Montagu and St. John to those of Canning and Peel. Look to India. The ablest man who ever governed India was Warren Hastings, and was he not in the first rank at Westminster? The ablest civil servant I ever knew in India was Sir Charles Metcalfe, and was he not of the first standing at Eton? The most eminent member of the aristocracy who ever governed India was Lord Wellesley. What was his Eton reputation? I must also mention—I cannot refrain from mentioning – another noble and distinguished Governor-General. A few days ago, while the memory of the speech to which I have alluded was still fresh in my mind, I read in the *Musae Cambridgienses* a very

Criticism of Ellenborough's

Value of liberal education as a source of success in life

eloquent and classical ode by a young poet of seventeen, which the University of Cambridge rewarded with a gold medal; and with pleasure, not altogether unmingled with pain, I read at the bottom of that composition the name of the Honourable Edward Law, of St. John's College. I saw with pleasure that the name of Lord Ellenborough may be added to the long list of men who, in early youth, have by success in academical studies given the augury of the part which they were to play in public life. It is no answer to say that you can point—as it is desirable that you should be able to point—to two or three men of great powers who, having idled when they were young, stung with remorse and generous shame have afterwards exerted themselves to retrieve lost time. Such exceptions should be noted, for they seem intended to encourage those who, after having thrown away their youth from levity or love of pleasure, may be inclined to throw their manhood after it from despair; but the general rule is, beyond all doubt, that the men who were first in the competition of the schools have been first in the competition of the world.

"Men who are first in the competition of the schools have been first in the competition of the world".

The noble Lord is of opinion that by encouraging natives to study the arts and learning of Europe, we are preparing the destruction of our power in India. I am utterly at a loss to understand how, while condemning education when it is given to Europeans, he should regard it with dread when it is given to the natives. This training, we are told, makes a European a bookworm, a twaddler, a man unfit for the active duties of life; but give the same education to a Hindu, and it arms him with such an accession of intellectual strength, that an established Government with an army of 250,000 men, backed by the whole

Criticism of Ellenborough's objection to educating Indians

military and naval force of England, are to go down inevitably before its irresistible power.

II. Extracts from Report of Civil Service Committee, 1854.

Nothing can be further from our wish than to hold out premiums for knowledge of wide surface and of small depth. We are of opinion that a candidate ought to be allowed no credit at all for taking up a subject in which he is a mere smatterer. Profound and accurate acquaintance with a single language ought to tell more than bad translations and themes in six languages. A single paper which shows that the writer thoroughly understands the principles of the differential calculus ought to tell more than twenty superficial and correct answers to questions about chemistry, botany, mineralogy, metaphysics, logic and English history.

No premium for 'knowledge of wide surface and of small depth'

* * * *

The marks ought, we conceive, to be distributed among the subjects of examination in such a manner that no part of the kingdom, and no class of schools, shall exclusively furnish servants to the East India Company. It would be grossly unjust, for example, to the great academical instiutitons of England not to allow skill in Greek or Latin versification to have a considerable share in determining the issue of the competition. Skill in Greek and Latin versification has, indeed, no direct tendency to form a judge, a financier, or a diplomatist. But the youth who does best what all the ablest and most ambitious youths about him are trying to do well, will generally prove to be a superior man ; nor can we doubt that an

Syllabus for examination should be wide.

Value of Greek and Latin

1 After the passing of the Act, Macaulay was appointed Chairman of a Committee for the purpose of making the necessary arrangements for introducing the competitive system. The other members were Lord Ashburton, Mr. Henry Melvill, Principal of Haileybury, Mr. Jowets, Mr. John Shaw Lefevre.

accomplishment by which Fox and Canning, Granville and Wellesley, Mansfield and Tenterden first distinguished themselves above their fellows indicates powers of mind which, properly trained and directed, may do great service to the State. On the other hand, we must remember that in the north of this island the art of metrical composition in the ancient languages is very little cultivated, and that men so eminent as Dugald Stewart, Horner, Jeffery, and Macintosh would probably have been quite unable to write a good copy of Latin alcacics, or to translate ten lines of Shakespeare into Greek iambics. We wish to see such a system of examination as shall not exclude from the service of the Company either a Macintosh or a Tenterden, either a Canning or a Horner.

We hope and believe, also, that it will very rarely be necessary to expel any probationer from the service on account of grossly profligate habits, or of any action unbecoming a man of honour. The probationers will be young men superior to their fellows in science and literature ; and it is not among young men superior to their fellows in science and literature that scandalous immorality is generally found to prevail.

Intellectual test expected to be the best moral test

It is notoriously but once in twenty years that a student who has attained high academical distinction is expelled from Oxford or Cambridge. Indeed, early superiority in science and literature generally indicates the existence of some qualities which are securities against vice—industry, self-denial, a taste for pleasures not sensual, a laudable desire to obtain the approbation of friends and relations. We therefore believe that the intellectual test which is about to be established will be found in practice to be also the best moral test that can be desired.

43. DALHOUSIE ON HEAVY WORK OF GOVERNOR-GENERAL[1]

1. Private Letter to Sir George Couper, October 2, 1852.

In the recognition which you have heard made of my being *de jure* G.-G., you will see the result of my insisting on my having submitted to me, and on doing my own business myself when I first arrived : and you will understand the criticism which represented me as doing every body's work. That criticism, if it had been correct, would have been a damnatory one....I have not been doing other people's work ; ....I only would not leave them, or permit them to do the work that is mine. So far am I from having more work sent to me than is necessary, I have greatly curtailed it, though even thus it is too much for any man. I reckon that (besides an enormous mass of formal detail which does not come up) not less than 20,000 te 25,000 papers are submitted for the orders of the G.-G. in the course of each year. Yet by systematising ; by causing an analysis or *precis* of each paper to be made by the officers ; by making *them* dispose of each paper on its progress, not troubling me with it *till it is ripe for my orders* (unless my orders should be indispensable during its progress) ; and by causing all unimportant papers to be submitted, not in bulk but on a register, on which my orders are inserted in a column left for the purpose,—by all these rules, I say, which are directed to make the secretaries lighten my labour while they do not command my judgment or exercise my functions, I do make every man do his own duty ; and the aggregate work,.... ...thus con-

Procedure followed by Dalhousie

1 It is interesting to compare Lord Curzon's experience with that of Lord Dalhousie. He worked "from 10 a.m., with the exception of an hour or two for meals, or a public function or a private drive, until 2 a.m. on the following

densed, does not fill more than eight despatch-boxes each week. Even thus, I repeat, the labour is incessant, and my performance of it unsatisfactory to myself.... ....

II. Private Letter to Sir George Couper, May 28, 1854.

Working hours

.... I drive for an hour at day-dawn, and ride for another hour or so after sunset—work from 6 to 8½ A. M., and from 10 A. M. to 6 P. M.—sleep, or rather toss about, from 10½ P.M. to 4½ A.M....... .... That's my life ; and if there is any one whom you wish especially ill you cannot serve him out better than by wishing him the miserable dog's life I lead. I could not sustain it for another year.........

44. DALHOUSIE ON RELATIONS BETWEEN 'HOME' GOVERNMENT AND GOVERNMENT OF INDIA[1]

I. Private Letter to Sir George Couper, December 8, 1851.

........The fact is, these despatches (from the 'Home' Government to the Government of India) are penned for the most part by head clerks, and signed by many without being read, and by all *as members of a body*. The penmen—d—d fellows who do the mechanical work, which others sign—fancy themselves the hidden springs by which this Empire is in reality moved, and they write in a tone which no Secretary of State would address to the Lt.-Governor of the bulls and bisons in the Falkland Islands. The directors, who have not an atom of real power, cling

Nature of despatches sent by Court of Directors

morning or sometimes later." The Secretary of State wrote to him on March 28, 1899. "I hear.....you were working eleven hours a day......spare yourself as much as you possibly can, and recollect that in doing so you are really acting in the true interests of good and and efficient government in India See Ronaldshay, *The Life of Lord Curzon*, Vol. II, pp. 26, 54.

1 See Lord Ronaldshay, *British Government in India*, Vol. II. pp. 210-215

to its shadow; and don't dislike the arrogant tone of fault-finding when they read it; and........they sign one after another as a body what any one singly would not write to his neighbour but his nose should incontinently be pulled therefor........

II. Private Letter to Sir George Couper, September 23, 1854.

I can't say I like Sir C. Wood as well as they did at the India House, or as I did at first. He is fidgety and meddlesome. Under him it is not the Board of Control it was meant to be, but a Board of Interference, which it was not meant to be. He is very much disposed to treat the Government of India as no Governor-General will submit to be treated.... .... He is complimentary and all that, but it does not reconcile me. ....

Sir Charles Wood as President of Board of Control

III. Private Letter to Sir George Couper, March 12, 1856.

I have left India without receiving one word of thanks or civility from the Court of Directors or from H. M. Government. For two mails before I ceased to be G.-G. the Chairman did not write to me at all. For one mail I received no letter from the President of the Board of Control. After I ceased to be G.-G. I had letters from each, but not a civil word from either. They have never answered my application for a few honours for those who have served under me............Altogether, I feel that I have been treated most ungraciously and discourteously, after such services as mine, and............I feel and resent it deeply. One person has treated me with honour and consideration, now as ever—the Sovereign I serve. That, too, I feel deeply[1].

Dalhousie 'treated most ungraciously'

1 Regarding Lord Dalhousie's letters to Sir George Couper Lord Curzon remarks, "........they represent the eager and often contradictory outpourings of an impatient spirit, finding in the confidential intercourse with a lifelong friend the outlet for sentiments and emotions—even for prejudices and passions—which he dared confess to no one else, and which he never intended for publication, either early or later" (*British Government in India*, Vol. II, p. 204).

45. DALHOUSIE ON LEGISLATIVE COUNCIL.

Dalhousie on inclusion of Indian member in Legislative Councli

[In his essay entitled "The Government of India," dated October 13, 1852, Lord Dalhousie wrote, "………amidst the general unfitness there are already some Native gentlemen whose intellectual qualities, whose experience of our government, and whose extensive and minute knowledge of Indian details would render any one of them a very valuable member of the Legislative Council. For my part I should be personally glad to see such a gentleman appointed at once under the new Act". The Charter Act of 1853, however, did not provide for the appointment of any Indian member to the Legislative Council Lord Dalhousie then nominated Babu Prasanna Kumar Tagore of Calcutta to be Clerk-Assistant of the Council, describing him in a letter to Sir Charles Wood as "a man of ability, learning, wealth, and influence". Lee-Warner says, "Lord Dalhousie had created some alarm in the mind of the Directors by suggesting that one seat in the Council might be filled up by a native legislator".

Charges against Dalhousie

After the establishment of the Legislative Council sharp differences arose between Lord Dalhousie and Sir Charles Wood about its functions and constitutional importance. Three definite charges were brought against the Governor-General. "He had allowed it to take up grievances and thus weaken the Executive , he had permitted it to challenge the authority of the local Government. and even of the Court of Directors ; and its proceedings had agitated the public mind and so predisposed the people to rebellion……behind them lay a larger question, and that was whether the thin end of representation was being introduced". Lee-Warner argues that these charges are baseless and concludes, "During his term of office Lord Dalhousie checked the discussion of grievances, and kept debate within reasonable limit But the independence which he claimed might, it was argued, be misused by others, and it can not be denied that his zeal for the Council's freedom of action was calculated to arouse fears that were justified by the course of events after his retirement from office"[1]]

1. Diary, October 12, 1854.

By the beginning of June[2], the Council was in operation, and since that time has gone on steadily

1 Lee-Warner, *Life of Dalhousie*, Vol. II, pp. 232, 239-245.

2 June, 1854.

working, and setting itself into regular routine. By the Act it is my duty to take the chair whensoever I may be present. Hence I am obliged to act both as President of the Council, and as Chairman of it when in Committee. The Legislative Council transacts the business before it on much the same system as is observed in our own Parliament, but more approaching to the manner of the House of Lords than of the Commons. The number of the stages of each Bill and the opportunities of debate are accordingly diminished. A Bill is read, after notice given, a first time without debate. After notice given it is read a second time, debate being taken on the principle of the measure. It is then referred to a committee of three, who, after publishing and giving the public three months to comment upon it, give in their reports suggesting such amendments as they think necessary. The Council then resolves itself into a Committee of the whole Council upon the Bill. Finally, after notice given, the Bill is read a third time and passed. The questions are put and the sense of the Council taken in the same manner as in Parliament. If there be a division the clerk calls over the names, beginning with the junior, in order that the Governor-General may not, by voting first in order, exercise an undue influence upon the minds of the members. In the material from of our meetings we have adopted a good deal of the American plan. The legislative Council meets in the Council Chamber. The members are seated in a semi-circle, each having a desk before him for his books and papers. The table for the clerks is placed at the upper end of the semi-circle and the President's chair beyond it. At first, with the exception of the judges, the speaking was felt to be an unpalatable novelty by most of the members. Mr. D. Eliott[1] even proposed that members should be allowed to read their speeches on the

Procedure

First and Second Reading

Committee stage

Third Reading

Voting

Arrangement of seats in the Council

1 Nominated by the Government of Madras.

Speeches

ground that many members would not be able to speak *viva voce*. He gave himself as an instance. But as he had made an excellent speech in proposing his motion, his *argumentum ad hominem* was held to be null, and his suggestion was negatived without a division. The Council has already done a great deal of work, and I have no doubt will fulfil the expectations it has raised.

II. Letter to Sir Charles Wood, September 18, 1854.

Independence of the Legislative Council

You have instituted by law an independent body of ten or twelve English gentlemen, and it is right you should know early that you will find them asserting their legislative independence. They will, I am certain, receive with respect any reports of the Commission[1] which the Directors may send. They will consider them with care. But they will assuredly not submit their legislation for the previous information of the Commission, nor will they stay their legislation to await indefinitely what the Commission may be expected to bring forth[2].

Law Commission

1 The reference is to the Law Commission appointed on November 9, 1853, in accordance with the terms of the Charter Act of 1853. The first Law Commission was appointed in 1834 in accordance with the terms of the Charter Act of 1833. It consisted originally of Macaulay and three civil servants—one from each Presidency. This Commission prepared the draft of the Indian Penal Code, which did not become law until 1860. The Commission lost its importance after Macaulay's departure for England. The second Commission consisted of eight members and sat in London till 1856. In four valuable reports the Commission suggested the amalgamation of the Supreme and *Sadar* Courts and the preparation of a uniform code of civil and criminal procedure. To its labours may be attributed the passing of the Code of Civil Procedure (1859), Macaulay's Penal Code (1860) and the Code of Criminal Procedure (1861) as also the constitution of the High Courts (1861).

2 This is Lord Dalhousie's reply to Sir Charles Wood's suggestion that no legislation should be introduced without prior submission to London.

in a position which I do not think and never intended that they should occupy. I never wished to raise up a great independent body in India........I look upon all the Councils, Secretaries, etc., as so many machines for lightening the labour of the Governor-General, and for doing what I may call the mechanical work of the Government. I have made him more absolute than he was in the Executive Council, and I do not wish to make the Legislative Council a body which does more than aid him in law-making. The Executive Council is to aid him in administrating, the Legislative Council in law-making. I admit of course that the latter must be more independent, but I do not wish to make it a body that is likely to take upon itself more weight or authority than is necessary for the purpose of elaborating laws. I do not look upon it, as some of the young Indians do, as the nucleus and beginning of a constitutional Parliament in India.

Legislative Council not intended to be an independent body

Legislative Council not to be a Parliament in embryo

47. DALHOUSIE ON TRANSFER OF INDIA TO THE CROWN[1], 1858.

........I am no blind partisan of the E. I. Co., nor believe in the perfection of the Court of Directors, but common prudence and sense ought to forbid our sweeping them away in order to substitute something else in their room, until we have deliberately assured ourselves that the substitute we provide is better than, or at all events as good as, that which we destroy. Most certainly that assurance cannot as yet be felt.

Company should not be abolished without providing a better substitute.

Lord Palmerston's bill..................was as bad as *possible*, if Lord Derby had not actually produced another bill which is very much worse[2]........

1 Private Letter to Sir George Couper, April 22, 1858.

2 See *Indian Constitutional Documents*, Vol. II, Document No. 1.

It is to be feared that we must assume that the Company's separate existence and distinct Government cannot stand. Ever since 1770 it has been the object of never-ceasing popular clamour whenever the popular voice and thought could be fixed on India at all; and ill-founded and unreasonable as the feeling is, I doubt that the British public will never cease to clamour against and vituperate the Company's Government. The effect of this perpetual disparagement of the power that rules India is so mischievous in England, and so doubly mischievous in India, that I really think the abolition of the Company's Raj, though it would be a great evil, would still be a less evil than its continuance, if it is to continue only amidst a perpetual storm of attack, censure, contempt, and calumny in the Parliament of England, and from the Press and the English public of both countries. If the Company's Government is to be abolished, what shall be substituted for it? You cannot govern India as you have attempted to govern the colonies. The colonies have, nearly all of them, an English population similar in language, religion, feelings, and institutions to those of the mother country. Yet under the government of a Secretary of State at home. the mightiest of our colonies have been lost, and the rest is only preserved to us by our practically abandoning the right of really governing them in England. How is it possible, then, to expect that a Secretary of State at home can singly govern India, with a population which is five times as great as that of the mother country and all the colonies put together, and which differs from the mother country in every particular in which the colonies resemble it—in language, feeling, religion, and institutions? It cannot be reasonably expected. The class from which such a Secretary of State must be selected is very small. Of the few men who would be politically eligible still fewer could have any intimate acquaint-

Popular clamour against Company

Contrast between India and Colonies

ance with the vast Empire of which the Secretary is to have charge. If the Secretary be of the number of those who have no knowledge of the Indian Empire, it would obviously be unsafe to intrust it to his solitary ignorance. If, on the other hand, the Secretary be one of the very few who are well acquainted with the Indian Empire, it would be still more dangerous to intrust it to his sole authority; because his special knowledge would be likely, at one and the same time, to make him presumptuous, and to induce his colleagues to give way on every occasion to his superior knowledge. In either case, India would be given over virtually to a despotism which would be full of danger to the public interests. Therefore, if India is henceforth to be governed by a Secretary of State in the Queen's name, something must be devised to provide that check and guidance for his authority which the Court of Directors has hitherto supplied to the Cabinet of the Queen. Lord Palmerston's Council certainly did not do so, for nine nominees of the Crown, remaining in office for only a few years, then going out, and eligible for reappointment, could not possibly form an *independent* check on a Minister invested with the power of reappointing or excluding them as he pleased. In a few years they would insensibly have become the mere tools of the Minister. Lord Derby's Council, again, certainly did not form any check. For (passing over all the objections to the close limitation of qualifications, and the absurdity of many of the modes of election) the Council was endowed by the bill with no power at all.

Position of Secretary of State for India

Composition and functions of Secretary of States' Council

Under either Council, and according to either bill, an utterly ignorant Secretary or an over-confident, rash, and presumptuous, though highly instructed and experienced, Secretary would be as much the Padshah of India as ever was Akbar or Aurangzebe—

Apprehended despotism of Secretary of State

with this mighty difference, that he would rule the Indian Empire at ten thousand miles away from it....

At present I would, if I were Minister, introduce no change at all. I would tell the Parliament frankly that the time of great difficulties was not the time for great administrative changes which nobody could maintain to be immediately indispensable. When mutiny should have been quelled, rebellion put down, peace and order restored (I would say), I would pledge my honour that the whole subject should be brought before the Parliament, but at present the whole attention of the Government should be given to action, and not weakened by dividing it between action and legislation. When the time for legislation came, I would propose that the Home Government of India should, in the main, be assimilated with the Supreme Government of India, which in practice has been found for more than seventy years to work so well and which has achieved so much. I would abolish the Court of Directors and the Board of Control. I would propose that the government of India in England should be carried on by a Secretary of State, aided by a Board, in the same manner as the Governor-General and Council....... I would propose that the Board should consist of the same numbers as the Court of Directors now does, according to the Act of 1853; and that, as now, five should be appointed by the Crown and ten elected by the proprietors of East India stocks as the Directors are now elected. The Crown nominees thus would not outnumber the thoroughly independent members, as they do in Lord Derby's bill. The independent members would be elected, I admit, by an anomalous body, *but by a body which, anomalous as it is, has for nearly eighty years in practice elected a governing body of the highest efficiency*—that Court of Directors which has given us our Indian Empire and made it what it is. All business of every description should be transacted

Change should be postponed during Mutiny.

Dalhousie's own plan

Secretary of State aided by a Board

Composition of India Board

by the "India Board," of which the Secretary of State should sit as President, just as all business is transacted by the G.-G. in Council. Every question should be decided by a plurality of voices—the Secretary (like the G.-G.) having a second or casting vote in event of the Board being equally divided. Moreover, the Secretary (like the G.-G.) should have the power of acting on his own opinion, even though wholly outvoted by the Board, whenever he judged it necessary for the public interest to do so: provided always that on such occasions he recorded his reasons for so doing, and gave to the members of the Board an opportunity of recording their reasons also. I believe that such a form of Government would give to the Home administration that which experience has shown it to have given to the Supreme Government in India, and which all demand for the Home administration now, namely, capacity in the members, promptitude of action as well as deliberation, and full responsibility. The Crown, bound to select from those who had served in India, would (if it exercised its power faithfully) always put into the Board five of the best men who were to be got, including some who might shrink from the task of canvassing the proprietors. The elected members would, it is reasonable to suppose, be not less able than the able men who have usually been elected into the Court. They would be independent of the Minister, but no more disposed to thwart or obstruct him than the Court has been. With such a Board the Minister, if ignorant, would have always full command of information, and the best advice on every question that could come before him. If instructed, but rash or presumptuous, he would have men of high ability, of public reputation, of long experience, and of independent character to moderate his action and control his rashness or imprudence. Yet that control could never

Relations between Secretary of State and India Board

be carried too far, either by mistaken caution or from factious motives, for the Secretary....would always have it in his power to overrule his Council and act on his own opinion if he deemed it necessary to do so. And still he would only take so strong a step under deep sense of responsibility, because he would be bound to record his reasons and to let his colleagues record theirs, which, of course, would be called for in Parliament and reviewed there. Thus in all ordinary cases he would have the best information and the best advice, and would probably act with his Board. If his Board were equally divided, a proper preponderance would be given to his opinion, and his casting vote would decide the question as he wished. If his Board were all against him, and offered factious opposition or created undue delays, he could always beat down opposition and ensure prompt action by deciding and acting without them. And yet he would not dare to do this without sufficient and good reasons; for he must record them, his colleagues would record theirs, and Parliament would review both and judge them.

Parliamentary control over Secretary of State in Council

* * * *

Above all, this plan would leave no doubt as to where responsibility lay. In every case it must lie on the Secretary. For if he acted against his Board, he is solely responsible for overruling them; if he acted with his Board, he is equally responsible, because it was in his power to overrule them if he pleased. If it be objected that the Board is too numerous for the transaction of business, I admit that the objection exists, but it is not conclusive. The Board of fifteen, we know, can transact the business of India efficiently, because fifteen Directors are now transacting it; and from 1770 to 1830 twenty-four transacted it without difficulty or impediment.

Full responsibility on Secretary of State

...........My plan...........would make the Board of

Virtual abolition of Double Government

Control and the Board of Directors—now two separate authorities—into one authority. The double government, so called, would be got rid of, while the new system would retain much of the good which the old one possesses, and would acquire advantages which experience has shown to belong to the form of administration long existing in India itself.... ..I think my project more practical and more likely to succeed, and less accompanied with risk, than the vast changes proposed by Lord Palmerston and Lord Derby.

48. EAST INDIA COMPANY'S PETITION TO PARLIAMENT[1], 1858.

That your petitioners, at their own expense, and by the agency of their own civil and military servants, originally acquired for this country its magnificent empire in the East.

India acquired by the Company without assistance from the Crown

That the foundations of this empire were laid by your petitioners, at that time neither aided nor controlled by Parliament, at the same period at which a succession of administrations under the control of Parliament were losing to the Crown of Great Britain another great empire on the opposite side of the Atlantic.

India ruled without cost to British Exchequer

That during the period of about a century which has since elapsed, the Indian possessions of this country have been governed and defended from the resources of those possessions without the smallest cost to the British Exchequer, which, to the best of your petitioners' knowledge and belief, cannot be said of any other of the numerous foreign dependencies of the Crown.

That it being manifestly improper that the administration of any British possession should be inde-

1 February, 1858. This petition was drafted by John Stuart Mill.

pendent of the Ceneral Government of the empire, Parliament provided, in 1773, that a department of the Imperial Government should have full cognizance of, and power of control over, the acts of your petitioners in the administration of India; since which time the Home branch of the India Government has been conducted by the joint counsels, and on the joint responsibility, of your petitioners and of a Minister of the Crown.

Parliamentary control over Company's affairs in India

That this arrangement has at subsequent periods undergone reconsideration from the Legislature, and various comprehensive and careful Parliamentary Inquiries have been made into its practical operation; the result of which has been, on each occasion, a renewed grant to your petitioners of the powers exercised by them in the administration of India.

That the last of these occasions was so recent as 1853, in which year the arrangements which had existed for nearly three-quarters of a century were with certain modifications, re-enacted, and still subsist.

That, notwithstanding, your petitioners have received an intimation from Her Majesty's Ministers of their intention to propose to Parliament a Bill for the purpose of placing the government of Her Majesty's East Indian Dominions under the direct authority of the Crown—a change necessarily involving the abolition of the East India Company as an instrument of government.

Company in the dark about reasons for its abolition

That your petitioners have not been informed of the reasons which have induced Her Majesty's Ministers, without any previous inquiry, to come to the resolution of putting an end to a system of administration, which Parliament, after inquiry, deliberately confirmed and sanctioned less than five years ago, and which, in its modified form, has not been in operation quite four years, and cannot be

considered to have undergone a sufficient trial during that short period.

That your petitioners do not understand that Her Majesty's Ministers impute any failure to those arrangements or bring any charge, either great or small, against your petitioners. But the time at which the proposal is made compels your petitioners to regard it as arising from the calamitous events which have recently occurred in India.

Company invites enquiry about causes of Mutiny.

That your petitioners challenge the most searching investigation into the mutiny of the Bengal army, and the causes, whether remote or immediate, which produced that mutiny. They have instructed the Government of India to appoint a commission for conducting such an inquiry on the spot. And it is their most anxious wish that a similar inquiry may be instituted in this country by your [Lordships'] Honourable House; in order that it may be ascertained whether anything either in the constitution of the Home Government of India, or in the conduct of those by whom it has been administered, has had any share in producing the mutiny, or has in any way impeded the measures for its suppression; and whether the mutiny itself, or any circumstance connected with it, affords any evidence of the failure of the arrangements under which India is at present administered.

That, were it even true that these arrangements had failed, the failure could constitute no reason for divesting the East India Company of its functions, and transferring them to Her Majesty's Government. For, under the existing system, Her Majesty's Government have the deciding vote. The duty imposed upon the Court of Directors is to originate measures and frame drafts of instructions. Even had they been remiss in this duty, their remissness, however discreditable to themselves, could in no way absolve the

Mutiny no justification for abolition of Company

responsibility of Her Majesty's Government, since the Minister for India possesses, and has frequently exercised, the power of requiring that the Court of Directors should take any subject into consideration, and prepare a draft dispatch for his approval. Her Majesty's Government are thus in the fullest sense accountable for all that has been done, and for all that has been forborne or omitted to be done. Your petitioners, on the other hand, are accountable only in so far as the act or omission has been promoted by themselves.

Joint responsibility of Ministers and Directors for Indian affairs

That under these circumstances, if the administration of India had been a failure, it would, your petitioners submit, have been somewhat unreasonable to expect that a remedy would be found in annihilating the branch of the ruling authority which could not be the one principally in fault, and might be altogether blameless, in order to concentrate all the powers in the branch which had necessarily the decisive share in every error, real or supposed. To believe that the administration of India would have been more free from error had it been conducted by a Minister of the Crown without the aid of the Court of Directors, would be to believe that the Minister, with full power to govern India as he pleased, has governed ill because he has had the assistance of experienced and responsible advisers.

That your petitioners, however, do not seek to vindicate themselves at the expense of any other authority. They claim their full share of the responsibility of the manner in which India has practically been governed. That responsibility is to them not a subject of humiliation but of pride. They are conscious that their advice and initiative have been, and have deserved to be, a great and potent element in the conduct of affairs in India, and they feel complete assurance that, the more attention is bestowed and the more light thrown upon India and its

Company proud of its work in India

administration, the more evident it will become that the government in which they have borne a part has been not only one of the purest in intention, but one of the most beneficent in act, ever known among mankind[1]; that, during the last and present generation in particular, it has been, in all departments, one of the most rapidly improving governments in the world; and that, at the time when this change is proposed, a greater number of important improvements are in a sta e of more rapid progress than at any former period. And they are satisfied that whatever further improvements may be hereafter effected in India can only consist in the development of germs already planted, and in building on foundations already laid, under their authority, and in a great measure by their express instructions.

That such, however, is not the impression likely to be made on the public mind, either in England, or in India, by the ejection of your petitioners from the place they fill in the Indian administration. It is not usual with statesmen to propose the complete abolition of a system of government, of which the practical operation is not condemned, and it might be generally inferred from the proposed measures, if carried into effect at the present time, that the East India Company, having been entrusted with an important portion of the administration of India, have so abused their trust as to have produced a sanguinary insurrection, and nearly lost India to the British empire; and that, having thus crowned a long career of misgovernment, they have, in deference to public indignation, been deservedly cashiered for their misconduct.

Transfer of India to Crown would cast a slur on the Company.

1 For a criticism of this statement see the speech of Sir George Cornewall Lewis in the House of Commons, February 12, 1858 (Extracts reprinted in Keith, *Speeches and Documents on Indian Policy*, Vol. I, pp. 342-355).

That if the character of the East India Company were alone concerned, your petitioners might be willing to await the verdict of history. They are satisfied that posterity will do them justice. And they are confident that even now justice is done to them in the minds, not only of Her Majesty's Ministers, but of all who have any claim to be competent judges of the subject. But, though your petitioners could afford to wait for the reversal of the verdict of condemnation which will be believed throughout the world to have been passed on them and their government by the British nation, your petitioners cannot look without the deepest uneasiness at the effect likely to be produced on the minds of the people of India. To them, however incorrectly the name may express the fact, the British Government in India is the Government of the East India Company. To their minds the abolition of the Company will, for some time to come, mean the abolition of the whole system of administration with which the Company is identified The measure, introduced simultaneously with the influx of an overwhelming British force, will be coincident with a general outcry, in itself most alarming to their fears, from most of the organs of opinion in this country as well as of English opinion in India, denouncing the past policy of the Government on the express ground that it has been too forbearing and too considerate towards the natives. The people of India will at first feel no certainty that the new Government, or the Government, under a new name, which it is proposed to introduce, will hold itself bound by the pledges of its predecessors. They will be slow to believe that a Government has been destroyed only to be followed by another which will act on the same principles and adhere to the same measures. They cannot suppose that the existing organ of administration would be swept away

Effect of abolition of Company on the minds of Indian people

without the intention of reversing any part of its policy. They will see the authorities, both at home and in India, surrounded by persons vehemently urging radical changes in many parts of that policy. And interpreting, as they must do, the change in the instrument of government, as a concession to those opinions and feelings, they can hardly fail to believe that, whatever else may be intended, the Government will no longer be permitted to observe that strict impartiality between those who profess its own creed and those who hold the creeds of its native subjects which hitherto characterized it; that their strongest and most deeply-rooted feelings will henceforth be treated with much less regard than heretofore; and that a directly aggressive policy towards everything in their habits, or in their usages and customs, which Englishmen deem objectionable, will be no longer confined to individuals and private associations, but will be backed by all the power of Government.

India will be alarmed.

And here your petitioners think it important to observe, that in abstaining as they have done from all interference with any of the religious practices of the people of India, except such as are abhorrent to humanity, they have acted not only from their own conviction of what is just and expedient, but in accordance with the avowed intentions and express enactments of the Legislature, framed 'in order that regard should be had to the civil and religious usages of the natives,' and also that suits, civil and criminal, against the natives should be conducted according to such rules 'as may accommodate the same to the religion and manners of the natives.' That their policy in this respect has been successful, is evidenced by the fact, that during a military mutiny, said to have been caused by unfounded apprehensions of danger to religion, the heads of the native states, and the masses of the population, have remained faithful to the British Government.' Your petitioners need

Concessions made to Indian sentiments and prejudices by the Company

hardly observe how very different would probably have been the issue of the late events, if the native princes, instead of aiding in the suppression of the rebellion, had put themselves at its head, or if the general population had joined in the revolt ; and how probable it is that both these contingencies would have occurred, if any real ground had been given for the persuasion that the British Government intended to identify itself with proselytism. And it is the honest conviction of your petitioners that any serious apprehension of a change of policy in this respect would be likely to be followed, at no distant period, by a general rising throughout India.

That your petitioners have seen with the greatest pain the demonostrations of indiscriminate animosity towards the natives of India, on the part of our countrymen in India and at home, which have grown up since the late unhappy events. They believe these sentiments to be fundamentally unjust ; they know them to be fatal to the possibility of good government in India. They feel that if such demonstrations should continue, and, especially if weight be added to them by legislating under their supposed influence, no amount of wisdom and forbearance on the part of the Government will avail to restore that confidence of the governed in the intentions of their rulers without which it is vain even to attempt the improvement of the people.

Hostile attitude of Englishmen to Indians

That your petitioners cannot contemplate without dismay the doctrine now widely promulgated that India should be administered with an especial view to the benefit of the English who reside there ; or that in its administration any advantage should be sought for Her Majesty's subjects of European birth, except that which they will necessarily derive from their superiority of intelligence, and from the increased prosperity of the people, the improvement of the

Is India to be governed in the interests of the ruling race ?

productive resources of the country, and the extension of commercial intercourse. Your petitioners regard it as the most honourable characteristic of the government of India by England, that it has acknowledged no such distinction as that of a dominant and subject race ; but has held that its first duty was to the people of India. Your petitioners feel that a great portion of the hostility with which they are assailed, is caused by the belief that they are peculiarly the guardians of this principle, and that so long as they have any voice in the administration of India, it cannot easily be infringed. And your petitioners will not conceal their belief that their exclusion from any part in the government is likely, at the present time, to be regarded in India as a first successful attack on that principle.

Time unfavourable for abolition of Company

That your petitioners, therefore, most earnestly represent to your [Lordships'] Honourable House, that, even if the contemplated change could be proved to be in itself advisable, the present is a most unsuitable time for entertaining it ; and they most strongly and respectfully urge on your [Lordships'] Honourable House the expediency of at least deferring any such change until it can be effected at a period when it would not be, in the minds of the people of India, directly connected with the recent calamitous events, and with the feelings to which those events have either given rise or have afforded an opportunity of manifestation. Such postponement, your petitioners submit, would allow time for a more mature consideration than has yet been given, or can be given in the present excited state of the public mind, to the various questions connected with the organization of a Government for India ; and would enable the most competent minds in the nation calmly to examine whether any new arrangement can be devised for the Home Government of India, unit-

ing a greater number of the conditions of good administration than the present; and, if so, which among the numerous schemes which have been or may be proposed, possesses those requisites in the greatest degree.

Company always prepared for changes and sacrifices

That your petitioners have always willingly acquiesced in any changes which, after discussion by Parliament, were deemed conducive to the general welfare, although such changes may have involved important sacrifices to themselves. They would refer to their partial relinquishment of trade in 1813; to its total abandonment and the placing of their Commercial Charter in abeyance, in 1833; to the transfer to India of their commercial assets, amounting to £15,858,000, a sum greatly exceeding that ultimately repayable to them in respect of their capital, independent of territorial rights and claims; and to their concurrence in 1853, in the measure by which the Court of Directors was reconstructed, and reduced to its present number. In the same spirit, your petitioners would gladly co-operate with Her Majesty's Government in correcting any defects which may be considered to exist in the details of the present system; and they would be prepared, without a murmur, to relinquish their trust altogether, if a better system for the control of the Government of India can be devised. But, as they believe that in the construction of such a system there are conditions which cannot, without the most dangerous consequences, be departed from, your petitioners respectfully and deferentially submit to the judgment of your [Lordships'] Honourable House their view of those conditions, in the hope that if your [Lordships'] Honourable House should see reason to agree in that view, you will withhold your legislative sanction from any arrangement for the government in question in at least an equal degree with the present.

That your petitioners may venture to assume that

it will not be proposed to vest the Home portion of the administration of India in a Minister of the Crown, without the adjunct of a Council composed of statesmen experienced in Indian affairs. Her Majesty's Ministers cannot but be aware that the knowledge necessary for governing a foreign country, and in particular a country like India, requires as much special study as any other profession, and cannot possibly be possessed by any one who has not devoted a considerable portion of his life to the acquisition of it.

Council to advise and check Minister for India

That in constituting a body of experienced advisers to be associated with the Indian Minister, your petitioners consider it indispensable to bear in mind that this body should not only be qualified to advise the Minister, but also, by its advice, to exercise, to a certain degree, a moral check. It cannot be expected that the Minister, as a general rule, should himself know India; while he will be exposed to perpetual solicitations from individuals and bodies, either entirely ignorant of that country, or knowing only enough of it to impose on those who know still less than themselves, and having very frequently objects in view other than the interests or good government of India. The influences likely to be brought to bear on him through the organs of popular opinion will, in the majority of cases, be equally misleading. The public opinion of England, itself necessarily unacquainted with Indian affairs, can only follow the promptings of those who take most pains to influence it, and these will generally be such as have some private interest to serve. It is, therefore, your petitioners submit, of the utmost importance that any Council which may form a part of the Home Government of India should derive sufficient weight from its constitution, and from the relation it occupies to the Minister, to be a substantial barrier against those

Importance of Council

inroads of self-interest and ignorance in this country from which the Government of India has hitherto been comparatively free, but against which it would be too much to expect that Parliament should of itself afford a sufficient protection.

That your petitioners cannot well conceive a worse form of government for India than a Minister with a Council whom he should be at liberty to consult or not at his pleasure, or whose advice he should be able to disregard, without giving his reasons in writing, and in a manner likely to carry conviction. Such an arrangement, your petitioners submit, would be really liable to the objections, in their opinion, erroneously urged against the present system. Your petitioners respectfully represent that any body of persons associated with the Minister, which is not a check, will be a screen. Unless the Council is so constituted as to be personally independent of the Minister, unless it feels itself responsible for recording an opinion on every Indian subject, and pressing that opinion on the Minister, whether it is agreeable to him or not, and unless the Minister, when he overrules their opinion, is bound to record his reasons, their existence will only serve to weaken his responsibilities and to give the colourable sanction of prudence and experience to measures in the framing of which those qualities have had no share.

That it would be vain to expect that a new Council could have as much moral influence, and power of asserting its opinion with effect, as the Court of Directors. A new body can no more succeed to the feelings and authority which their antiquity and historical antecedents give to the East India Company, than a legislature under a new name, sitting in Westminister, would have the moral ascendancy of the Houses of Lords and Commons. One of the most important elements of usefulness will thus

No new Council could be as effective as Court of Directors.

be necessarily wanting in any newly constituted Indian Council, as compared with the present.

That your petitioners find it difficult to conceive that the same independence in judgment and act, which characterizes the Court of Directors, will be found in any Council all of whose Members are nominated by the Crown. Owing their nomination to the same authority, many of them probably to the same individual Minister, whom they are appointed to check, and looking to him alone for their reappointment, their desire of recommending themselves to him and their unwillingness to risk his displeasure by any serious resistance to his wishes, will be motives too strong not to be in danger of exercising a powerful and injurious influence over their conduct. Nor are your petitioners aware of any mode in which that injurious influence could be guarded against, except by conferring the appointments, like those of the judges, during good behaviour; which, by rendering it impossible to correct an error once committed, would be seriously objectionable.

Council may be subservient to Minister.

That your petitioners are equally unable to see how, if the controlling body is nominated by the Minister, that happy independence of Parliamentary and party influence, which has hitherto distinguished the administration of India and the appointment to situations of trust and importance in that country, can be expected to continue. Your petitioners believe that in no Government known to history have appointments to offices, and especially to high offices, been so rarely bestowed on any other considerations than those of personal fitness. This characteristic, but for which in all probability India would long since have been lost to this country, is your petitioners conceive, entirely owing to the circumstance that the dispensers of patronage have been persons unconnected with party, and under no necessity of conciliating Parliamentary support; that, consequent-

Principle of appointment to high posts in India

ly, the appointments to offices in India have been, as a rule, left to the unbiassed judgment of the local authorities ; while the nominations to the civil and military services have been generally bestowed on the middle classes, irrespective of political considerations, and, in a large proportion, on the relatives of persons who had distinguished themselves by their services in India.

That your petitioners, therefore, think it essential that at least a majority of the Council which assists the Minister for India with its advice, should hold their seats independently of his appointment.

Relations between proposed Council and Minister

That it is, in the opinion of your petitioners, no less necessary that the order of the transaction of business should be such as to make the participation of the Council in the administration of India a substantial one. That to this end, it is, in the opinion of your petitioners, indispensable that the dispatches to India should not be prepared by the Minister and laid before the Council, but should be prepared by the Council and submitted to the Minister. This would be in accordance with the natural and obvious principle that persons chosen for their knowledge of a subject should suggest the mode of dealing with it, instead of merely giving their opinion on suggestions coming from elsewhere. This is also the only mode in which the Members of the Council can feel themselves sufficiently important or sufficiently responsible to secure their applying their minds to the subjects before them. It is almost unnecessary for your petitioners to observe, that the mind is called into far more vigorous action by being required to propose than by being merely called on to assent. The Minister has necessarily the ultimate decision. If he has also the initiative, he has all the powers which are of any practical moment. A body, whose only recognized function was to find fault, would speedily let that function fall into desuetude.

They would feel that their co-operation in conducting the government of India was not really desired ; that they were only felt as a clog on the wheels of business. Their criticism on what had been decided without their being collectively consulted would be felt as importunate, as a mere delay and impediment ; and their office would probably be seldom sought by those who were not willing to allow its most important duties to become nominal.

Relations between Council and subordinate officers

That with the duty of preparing the dispatches to India, would naturally be combined the nomination and control of the Home establishments. This your petitioners consider absolutely essential to the utility of the Council. If the officers through whom they work are in direct dependence upon an authority higher than theirs, all matters of importance will in reality be settled between the Minister and the subordinates, passing over the Council altogether.

Composition of proposed Council

That a third consideration, to which your petitioners attach great importance, is, that the number of the Council should not be too restricted. India is so wide a field, that a practical acquaintance with every part of its affairs cannot be found combined in any small number of individuals. The Council ought to contain men of general experience and knowledge of the world ; also men specially qualified by financial and revenue experience, by judicial experience, diplomatic experience, military experience. It ought to contain persons conversant with the varied social relations and varied institutions of Bengal, Madras, Bombay, the North-Western Provinces, the Punjab, and the native states Even the present Court of Directors, reduced as it is in numbers by the Act of 1853, does not contain all the varieties of knowledge and experience desirable in such a body. Neither, your petitioners submit, would it be safe to limit the number to that which would be strictly sufficient,

supposing all the appointments to be the best possible. A certain margin should be allowed for failures. which, even with the most conscientious selection, will sometimes occur. Your petitioners, moreover, cannot overlook the possibility that, if the nomination takes place by Ministers at the head of a political party, it will not always be made with exclusive reference to personal qualifications ; and it is indispensable to provide that such errors or faults in the nominating authority, so long as they are only occasional, shall not seriously impair the efficiency of the body.

That while those considerations plead strongly for a body not less numerous than the present, even if only regarded as advisers of the Minister, their other office, as a check on the Minister, forms, your petitioners submit, a no less forcible objection to any considerable reduction of the present number. A body of six or eight will not be equal to one of eighteen, in that feeling of independent self-reliance which is necessary to induce a public body to press its opinion on a Minister to whom that opinion is unacceptable. However unobjectionably in other respects so small a body may be constituted, reluctance to give offence will be likely, unless in extreme cases, to be a stronger habitual inducement in their minds than the desire to stand up for their convictions.

Size of Council should not be small.

Why powers of Court of Directors should be continued

That if, in the opinion of your [Lordships'] Honourable House, a body can be constituted which unites the above enumerated requisites of good government in a greater degree than the Court of Directors, your petitioners have only to express their humble hope that your endeavours for that purpose may be successful. But if, in enumerating the conditions of a good system of Home government for India, your petitioners have in fact enumerated the qualities possessed by the present system, then your

petitioners pray that your [Lordships'] Honourable House will continue the existing powers of the Court of Directors.

Questions of Double Government

That your petitioners are aware that the present Home Government of India is reproached with being a double Government; and that any arrangement by which an independent check is provided to the discretion of the Minister will be liable to a similar reproach. But they conceive that this accusation originates in an entire misconception of the functions devolving on the Home Government of India, and in the application to it of the principles applicable to purely executive departments. The Executive Government of India is, and must be, seated in India itself. The Court of Directors is not so much an executive as a deliberative body. Its principal function, and that of the Home Government generally, is not to direct the details of administration, but to scrutinize and revise the past acts of the Indian Government; to lay down principles, and issue general instructions for their future guidance, and to give or refuse sanction to great political measures, which are referred home for approval. These duties are more analogous to the functions of Parliament, than to those of an Executive Board; and it might almost as well be said that Parliament, as that the Government of India, should be constituted on the principles applicable to Executive Boards. It is considered an excellence, not a defect, in the constitution of Parliament, to be not merely a double but a triple Government. An executive authority, your petitioners submit, may often with advantage be single because promptitude is its first requisite. But the function of passing a deliberate opinion on past measures, and laying down principles of future policy, is a business which, in the estimation of your petitioners, admits of, and requires the concurrence of

Functions of Directors

more judgments than one. It is no defect in such a body to be double, and no excellence to be single; especially when it can only be made so by cutting off that branch of it which by previous training is always the best prepared, and often the only one which is prepared at all, for its peculiar duty.

That your petitioners have heard it asserted that, in consequence of what is called the double Government, the Indian authorities are less responsible to Parliament and the nation, than other departments of the Government of the empire, since it is impossible to know on which of the two branches of Home Government the responsibility ought to rest. Your petitioners fearlessly affirm, that this impression is not only groundless, but the very reverse of the truth. The Home Government of India is not less, but more responsible, than any other branch of the administration of the State; inasmuch as the President of the Board of Commissioners, who is the Minister for India, is as completely responsible as any other of Her Majesty's Ministers, and in addition, his advisers also are responsible. It is always certain, in the case of India, that the President of the Board of Commissioners must have either commanded or sanctioned all that has been done. No more than this, your petitioners submit, can be known in the case of the head of any department of Her Majesty's Government. For it is not, nor can it rationally be supposed, that any Minister of the Crown is without trusted advisers; and the Minister for India must, for obvious reasons, be more dependent than any other of Her Majesty's Ministers upon the advice of persons whose lives have been devoted to the subject on which their advice has been given. But in the case of India, such advisers are assigned to him by the constitution of the Government, and they are as much responsible for what they advise as he for what he ordains; while

Responsibility for Indian administration rests on President of Board of Control.

in other departments the Minister's only official advisers are the subordinates in his office—men often of great skill and experience, but not in the public eye; often unknown to the public even by name; official reserve precludes the possibility of ascertaining what advice they give, and they are responsible only to the Minister himself. By what application of terms this can be called responsible government, and the joint government of your petitioners and the India Board an irresponsible government, your petitioners think it unnecessary to ask.

Question of Indian army

That, without knowing the plan on which Her Majesty's Ministers contemplate the transfer to the Crown of the servants of the Company, your petitioners find themselves unable to approach the delicate question of the Indian army, further than to point out that the high military qualities of the officers of that army have unquestionably sprung in a great degree from its being a principal and substantive army, holding Her Majesty's commissions and enjoying equal ranks with Her Majesty's officers and your petitioners would earnestly deprecate any change in that position.

Company invites enquiry into every department of Indian administration.

That your petitioners, having regard to all these considerations, humbly pray your Honourable House that you will not give your sanction to any change in the constitution of the Indian Government during the continuance of the present unhappy disturbances, nor without a full previous inquiry into the operations of the present system. And your petitioners further pray that this inquiry may extend to every department of Indian administration. Such an inquiry your petitioners respectfully claim, not only as a matter of justice to themselves, but because, when, for the first time in this century, the thoughts of every public man in this country are fixed on India, an

enquiry would be more thorough, and its results would carry much more instruction to the mind of Parliament and of the country, than at any preceding period.

APPENDIX

DOCUMENTS ON INDIAN STATES

49. SUBSIDIARY TREATY WITH MYSORE[1], 1799.

Territorial acquisitions of the Company

[The Fourth Anglo-Mysore War came to an end in May, 1799, with the capture of Seringapatam and the heroic death of Tipu Sultan Lord Wellesley annexed to the Company's dominions Kanara, Coimbatore, some districts on the east and the fortress of Seringapatam. To the Nizam were given certain districts on the north-east, and to the Peshwa some districts were offered on certain conditions, which he refused. The districts offered to the Peshwa were then divided between the Company and the Nizam In 1800 the Nizam surrendered his acquisitions in order to settle the Company's claims for the payment of the subsidiary force. The annexation of the Mysore districts to the Company's dominions was based on a leading principle of Wellesley's policy—to secure terri ory the revenues of which should suffice for the payment of the subsidiary force of the State concerned He wrote to the Court of Directors on August 3, 1799 ·

"In framing this engagement, it was my determination to establish the most unqualified community of interests between the Government of Mysore and the Company, and to render the Rajah's northern frontier, in effect, a powerful line of our defence. With this view, I have engaged to undertake the protection of his country, in consideration of an annual subsidy of seven lacs of star pagodas, but recollecting the embarrassments which have arisen to all parties concerned under the double governments and conflicting authorities unfortunately established in Oudh, the Carnatic and Tanjore I resolved to reserve to the Company the most extensive and indisputable powers of interposition in the internal affairs of Mysore, as well as an unlimited right of assuming the direct management of the country (whenever such a step might appear necessary for the security of the funds destined to the subsidy), and of requiring extraordinary aid beyond the amount of the fixed subsidy, either in time of war, or of preparations for hostility. Under this arrangement I trust that I shall be enabled to command the whole resources of the Rajah's territory, to improve its cultivation, to extend its commerce, and to secure the welfare of its inhabitants. It appeared to me a more candid and liberal, as well as a more wise policy, to apprize the Rajah distinctly at the moment of his accession, of the exact nature of his dependence on the Company, than to leave any matter for future doubt or discussion."

Nature of Company's control over Mysore

1 July 8, 1799.

The remaining portion of Tipu Sultan's territory was made over to a prince of the Hindu ruling family which had been dispossessed by Haidar Ali The prince being then a child five years of age, the administration was entrusted to Purnaiya, Tipu's loyal minister. Articles 4 and 5 of the treaty 'went far beyond, the standard model' of subsidiary treaties, and "the independence of Mysore was avowedly destroyed, by orders clothed in the form of a treaty."

The administration was undertaken by the Raja in 1811. The misgovernment of the Raja provoked a rebellion, and in 1831 Lord William Bentinck placed the State under British administration In 1881 Lord Ripon effected the 'rendition of Mysore' to a descendant of the ruling family.]

Article 2. The Honourable the East India Company Bahaudur agrees to maintain, and His Highness Maharajah Mysore Kistna Rajah Oodiaver Bahaudur agrees to receive, a military force for the defence and security of His Highness's dominions. In consideration of which protection His Highness engages to pay the annual sum of seven lacs of star pagodas to the said East India Company. .... Subsidiary force

* * * *

Article 4. And whereas it is indispensably necessary that effectual and lasting security should be provided against any failure in the funds destined to defray........the expense of maintaining the............ military force............, it is hereby stipulated and agreed between the contracting parties, that whenever the Governor-General in Council........shall have reason to apprehend such failure in the funds so destined, the said Governor-General in Council shall be at liberty, and shall have full power and right either to introduce such regulations and ordinances as he shall deem expedient for the internal management and collection of the revenues, or for the better ordering of any other branch and department of the Government of Mysore; or to assume and bring under the direct management of the servants of the said Company Bahaudur, such part or parts of the territorial possessions of His Highness............as

British right to interfere in internal affairs to secure regular payment of money for maintaining the subsidiary force

shall appear to him, the said Governor-General in Council, necessary to render the said funds efficient and available either in time of peace or war.

Article 5. And it is hereby further agreed, that whenever the said Governor-General in Council shall signify to the said Maharajah........that it is become necessary to carry into effect the provisions of the 4th Article, His said Highness...........shall immediately issue orders to Aumils, or other officers, either for carrying into effect the said regulations accordingly to the tenor of the 4th Article, or for placing the territories required under the exclusive authority and control of the English Company Bahaudur ; and in case His Highness shall not issue such orders within ten days from the time when the application shall have been formally made to him, then the said Governor-General in Council shall be at liberty to issue orders by his own authority.......

* * * * *

Article 6. His Highness.............engages........that he will carefully abstain from any interference in the affairs of any state in alliance with the said English Company Bahaudur or of any State whatever ; and for securing the object of this stipulation it is further stipulated and agreed, that no communication or correspondence with any foreign state whatever shall be holden by His said Highness without the previous knowledge and sanction of the said English Company Bahaudur.

Mysore not to have relations with any other State

Article 14. His Highness........hereby promises to pay at all times the utmost attention to such advice as the Company's Government shall occasionally judge it necessary to offer to him, with a view to the economy of his finances, the better collection of his revenues, the administration of justice, the extension of commerce, the encouragement of trade, agriculture, and industry, or any other objects con-

British advice to be accepted by Mysore

nected with the advancement of His Highness's interests, the happiness of his people, and the mutual welfare of both states[1].

50. WELLESLEY'S TREATIES WITH HYDERABAD[2].

[In 1795 the Nizam was defeated at Kharda by the Marathas. He received no help from the British Government as Sir John Shore was determined to pursue the non-intervention policy. The Nizam then handed over the training of his troops to French officers, the most famous of whom was Francois Raymond. Lord Wellesley thought that these officers were "men of the most virulent principles of Jacobinism"[3]. He was afraid that the French commanders in the armies of Indian powers like the Nizam and Sindhia might some day "establish the power of France in India upon the ruin of the states of Poona and of the Deccan"[4]. In 1798 the Nizam was persuaded to enter into a defensive alliance with the Company against Tipu Sultan. British troops were moved to Hyderabad and the French-trained troops were disbanded The treaty of September 1, 1798, was 'obviously of a temporary nature and contracted for a special purpose'. Its main defect was that it did not promise the Nizam British assistance against the Marathas

Treaty of 1798

After the fall of Tipu it was felt necessary by Arthur Wellesley (later Duke of Wellington) "to extend the basis of the treaty of September 1, 1798 ; to make it generally defensive against all powers ; and, in fact, to take the Nizam under the protection of the British government"[5]. 'The model subsidiary treaty' of 1800 'saved Hyderabad at once from external ruin and from internal decay']

Treaty of 1800

I. Treaty, September 1, 1798.

Article 1. Such parts of the letter from Earl Cornwallis to His Highness the Nizam, dated the 7th

1 Article 9 of Lord Wellesley's treaty with Travancore (1805) is couched in the same language.

2 See Roberts, *India Under Wellesley*, Chapter VIII.

3 Martin, *Wellesley's Despatches*, Vol. I, p. 182.

4 Martin, *Wellesley's Despatches* Vol. I, p. 186.

5 Owen, *Wellington's Despatches*, pp. 20-21.

July, 1789, and which has always been considered in the light of a Treaty, as relate to the stationing of troops with His Highness'[1] are to be considered as in full force ; that is, the services of the new permanent subsidiary force are to be regulated precisely by the same restrictive clauses that operate on the present detachment...........

Subsidiary force may be used for suppressing internal rebellion.

Article 5. The said subsidiary force will at all times be ready to execute services of importance, such as, the protection of the person of His Highness, his heirs and successors, from race to race, and overawing and chastising all rebels or exciters of disturbance in the dominions of this State[2] ; but it is not to be employed on trifling occasions, nor, like Sebundy, to be stationed in the country to collect the revenues thereof.

Exclusion of Europeans

Article 6... ....And His Highness hereby engages for himself, his heirs and successors, that no Frenchman whatever shall ever hereafter be entertained in his own service, or in that of any of his Chiefs or

1 "......I agree that, in the sixth Article of the Treaty (of 1768 between the Company and the Nizam) the words 'whenever the situation of affairs will allow such a body of troops to march into the Deccan', shall be understood to mean, that the force engaged for by this Article, *viz.*, two battalions of sepoys and six pieces of cannon, manned by Europeans, shall be granted whenever Your Highness shall apply for it, making only one exception, that it is not to be employed against any power in alliance with the company. ......"—Lord Cornwallis to the Nizam, July 7, 1789.

2 Lord Cornwallis wrote to the Nizam on August 21, 1805, 'Your Highness must be aware that the obligation of the defensive alliance cannot be considered to render the British Government responsible for the security of your government against the evils of internal confusion and disorder originating in the defect of those arrangements which it is the duty of an independent state to establish and maintain". (Lee-Warner, *Life of Dalhousie*, Vol. II, p. 124).

dependants, nor be suffered to remain in any part of His Highness's dominions ; nor shall any Europeans whatever be admitted into the service of this State, nor be permitted to remain within its territories without the knowledge and consent of the Company's Government.

* * * * *

Article 8............in the event of............differences arising (between the Nizam and the Peshwa), whatever adjustment the English Government, weighing things in the scale of truth and justice, may determine upon shall, without hesitation or objection, meet with full approbation and acquiescence (of the Nizam).

Nizam's relations with the Peshwa to be controlled by the Company

II. Treaty, October 12, 1800.

Article 1. The peace, union, and friendship so long subsisting between the two States shall be perpetual ; the friends and enemies of either shall be friends and enemies of both............

Article 2............the British Government will never permit any power or State whatever to commit with impunity any act of unprovoked hostility or aggression against the rights or territories of His Highness the Nizam, but will at all times maintain and defend the same, in the same manner as the rights and territories of the Honourable Company are now maintained and defended.

Company assumes responsibility for defence of Nizam's territory.

* * * * *

Article 15........His Highness the Nizam engages neither to commence nor to pursue in future any negotiations with any other power whatever without giving previous notice and entering into mutual consultation with the Honourable East India Company's Government ; and the Honourable Company's Government on their part hereby declare that they have no manner of concern with any of His High-

Company to control Nizam's foreign relations

Nizam's 'absolute' control over his subjects

ness's children, relations, subjects, or servants with respect to whom His Highness is absolute.

Company's control over Nizam's foreign policy

Article 16............in the event of any differences arising (between the Nizam and any other Power), whatever adjustment of them the Company's Government, weighing matters in the scale of truth and justice, may determine, shall meet with full approbation and acquiescence (of the Nizam).

51. WELLESLEY'S TREATY WITH SINDHIA[1], 1804.

Treaties of 1803, 1804, 1807

[War broke out between Daulat Rao Sindhia and the Company in August, 1803, and it was ended by the treaty of Surji Arjungaon on December 30, 1803. Sindhia surrendered his territory in the Doab, gave up the overlordship of Delhi and Agra and accepted a subsidiary alliance of the usual kind. A defensive alliance was concluded in February, 1804. On November 5, 1817, Sindhia was compelled to sign a treaty which bound him to give assistance against the Pindaris and abolished his ovorlordship in Rajputana[2].

The treaty of 1804, "though never denounced, had been objected to by Lord Cornwallis, and treated as a dead letter when new compacts wete made with Gwalior in 1805 and 1817." In 1843 Lord Ellenborough construed the disturbances in Gwalior as falling under the spirit of Article 6 of the treaty of 1804, by which the British Government undertook to support the Maharaja, should necessity arise, with a subsidiary force[3].]

Subsidiary force

Article 3............the Maharajah (Daulat Rao Sindhia) agrees to receive, and the Honourable East India Company agrees to furnish, a subsidiary force .... This force is to be stationed at such place near the frontier of Dowlut Rao Sindhia as may hereafter be deemed most eligible by the British Government.

1 February 27, 1804

2 See Grant Duff, *History of the Mahrattas*, and Mehta, *Lord Hastings and the Indian States*.

3 *The Cambridge History of India*, Vol. V. p. 580.

Article 6. The subsidiary force will, at all times, be ready, on the requisition of the Maharajah, to execute services of importance, such as the care of the person of the Maharajah, his heirs and successors, the protection of the country from attack and invasion, the overawing and chastisement of rebels or exciters of disturbance in the Maharajah's dominions; but it is not to be employed on trifling occasions.

Subsidiary force may be employed for suppressing internal rebellion

* * * * *

Article 8........the Maharajah engages neither to commence nor to pursue in future any negotiation with any principal States or Powers, without giving previous notice and entering into mutual consultation with the Honourable East India Company's Government: and the Honourable Company's Government, on their part, declare that they will have no manner of concern with any of the Maharajah's relations, dependants, military chiefs, or servants, with respect to whom the Maharajah is absolute: and that they will, on no occasion, ever afford encouragement, support, or protection to any of the Maharajah's relations, dependants, chiefs, or servants, who may eventually act in opposition to the Maharajah's authority, but, on the contrary, at the requisition of the Maharajah they will aid and assist to punish and reduce all such offenders to obedience: and it is further agreed that no officer of the Honourable Company shall ever interfere in the internal affairs of the Maharajah's Government.

Company to control Sindhia's foreign relations.

Sindhia's 'absolute' control over his subjects

Company to help Sindhia in suppressing internal rebellions

No British interference in Sindhia's internal administration

Article 9.........the Maharajah Dowlut Rao Sindhia engages never to commit any act of hostility or aggression against any State or Chief in alliance with the Honourable Company, or against any other principal State or Power; and in the event of differences arising, whatever adjustment the Company's Government, weighing matters in the scale of truth and justice, may determine, shall meet with his full approbation and acquiescence.

Company to adjust differences between Sindhia and other powers

* * * * *

Each party to refrain from interfering with tributaries of the other

Article 14............neither of the two contracting parties shall enter into alliance, or have any concern with the tributaries or chiefs of the other ; and, in order to support the independent authority of both Governments, it is agreed and declared, that hereafter neither of the contracting parties will give protection or countenance to the rebellious tributaries and subjects of the other, but they will use their utmost endeavours for the apprehension of such rebels........

52 WELLESLEY'S TREATY WITH BHARATPUR[1], 1805.

[In the Second Anglo-Maratha War the Jat Raja of Bharatpur abandoned the British side and co-operated with the Marathas. General Lake launched four successive assaults on Bharatpur, all of which were beaten back, and he had to make peace with the Raja in 1805, leaving him in possession of his fortress.

In 1825 Durjan Sal, a relative of the minor Raja who had been enthroned with the approval of the British Government, tried to usurp the *gadi*. Lord Combermere, the Commander-in-Chief, stormed the fort of Bharatpur in January, 1826.]

Article 1. A firm and permanent friendship is established between the Honourable the East India Company and Maharajah Sewaee Bahadoor, Runjeet Sing Bahadoor, and between their heirs and successors.

British guarantee of territorial integrity

Article 2. As friendship has been established between the two States, the friends and enemies of one of the parties shall be considered the friends and enemies of both, and an adherence to this condition shall be constantly observed by both States.

* * * * *

Article 6. In the event of any enemy evincing a disposition to attack the dominions of the Honourable Company, Maharajah Runjeet Sing binds him-

1 April 17, 1805

self to assist, to the utmost of his power, in expelling the enemy and in no measure to hold any correspondence or be in any way connected with, or assisting to, the enemies of the Honourable Company.

Military assistance

Article 7. As by the second Article of the present Treaty, the Honourable Company becomes guarantee to Maharajah Runjeet Sing for the security of the country against external enemies, the Maharajah hereby agrees, that if any misunderstanding should arise between him and the circar of any other chieftain, the Maharajah will, in the first instance, submit the cause of dispute to the Honourable Company's Government, that the Government may endeavour to settle it amicably, agreeably to justice and ancient usage. If, from the obstinacy of the opposite party, no amicable terms can be settled, then Maharajah Runjeet Sing may demand aid from the Company's Government. In the event above stated in this Article it will be granted.

British control over foreign relations

Article 8. The Maharajah shall not in future entertain in his service, nor give admission to any English or French subjects, or any other person from among the inhabitants of Europe, without the sanction of the Honourable Company's Government ; and the Honourable Company also agrees not to give admission to any of the Maharajah's relations or servants without his consent.

Exclusion of Europeans

British non-interference with Raja's relations and servants

53. ARTHUR WELLESLEY[1] ON LORD WELLESLEY'S RELATIONS WITH INDIAN STATES, 1806.

I. Weakness of the system inherited by Lord Wellesley.

Another circumstance which embarrassed Government in India at all times, and was a considerable source of embarrassment at the period under consi-

1 Duke of Wellington.

deration, was the nature and state of the alliances between the British Government and its dependent and tributary states.

Nature of British alliances with Indian States

These alliances had always been formed in a moment of extreme weakness, and generally after the Native and dependent State had been conquered. The principal stipulation was uniformly protection by the British Government, in consideration of subsidy to be paid by the Native State, and in other respects the Native State was declared or was considered to be independent in the management of all its internal concerns.

The Native States having in every instance contracted these alliances in a moment of weakness, in which, of course, all the powers of their Governments were paralysed, they have invariably been under the necessity of calling for the assistance of the British protecting Government for the support of their authority in the management of their internal concerns.

Allied States dependent on British military support

The foundation and the instrument of all power there (*i e.*, in Indian States) is the sword ; and when these alliances have been formed, the sword, or in other words, the army of the East India Company, became the only support and the only efficient instrument of authority of the protected Native states.

This position of affairs, which was the result of the principle of government long established in the East, and of the weakness of the Native State, was attended by a stipulation in some cases, or an understand ng in others, that the Native State should be *independent* in all the operations of its internal government ; and at the very moment in which this stipulation was made, the interference of the British Government was required, and all the internal concerns of the Native State submitted to its judgment, in order that its agents might see whether the cases

British interference in internal affairs of allied States

in which its interference was called for were of a nature to justify it.

Here, then, the door was necessarily opened to the interference of the British Government in every concern ; and the result was increased weakness in the Native State, jealousy of the this interference, and disunion bordering upon treachery.

II. Treaty with Mysore, 1799.

The principal and all the centre part of the territories of Tipu were given to a descendant of the ancient Rajas of Mysore, in whose person a state was formed under the immediate influence and protection of the British Government. This state was connected by a treaty of alliance with the Company.........As alliances of this description, by conferring a nominal independence on the Princes connected by them with the Company, had been found in other instances to be attended with many inconveniences, to render necessary a constant interference by the protecting Government in the internal affairs of the Native subordinate state, and to occasion internal weakness, jealousy of the protecting power, and a waste and embarrassment of the resources of the Government, it was thought best, in the treaty of alliance with the Government of Mysore, to provide for the interference of the British Government in all its concerns when such interference might be necessary ; and the state in which this Government is found to be at this moment, the cordial and intimate union which exists between the Government of Mysore and the British authorities, and the important strength and real assistance which it has afforded to the British Government in all its recent difficulties, afford the strongest proofs of the wisdom of this stipulation of the treaty.

Speciality of the treaty : provision for British interference in internal affairs

Justification of the treaty

III. Annexation of the Carnatic[1], 1801.

British interference in internal affairs

One of the great evils in this alliance (between the Company and the Nawab of Arcot), as in all those of this description which had been formed in India, was that it provided that the Company should not interfere in the internal concerns of the Nawab's Government, at the same time that the interference of the Company in every possible case was absolutely and essentially necessary for the support of the Native Government, and was practised on every occasion.

Nawab's debts

Another evil which affected this, as well as every alliance of the same description, was......that the Nawab was obliged to borrow money, at large interest, to make his payments at the stipulated periods.......

Besides these evils, there was a manifest indifference or rather disaffection ,in the Nawab Omdat ul

British relation with with Nawabs of Carnatic

1 It was with the support of the English Company that Muhammad Ali had made himself ruler of the Carnatic in the fifties of the eighteenth century. By a treaty made with Lord Cornwallis he had empowered the British Government to assume the whole administration of his territory in time of war. "The government of the Carnatic had long been an open scandal. The dual control had debased the Nawab, ruined his people, and so corrupted the settlement of Madras that the civil servants of that Presidency possessed the worst reputation of all the Company's representatives". The so-called Arcot debts created many scandals in India and in England. Muhammad Ali was succeeded in 1795 by his son Umdat-ul-Umra who died in July, 1801. At the capture of Seringapatam Lord Wellesley found evidence, which was 'not very conclusive or convincing', that Umdat-ul-Umra and his son had corresponded secretly with Tipu Sultan. By a declaration dated July 27, 1801, Lord Wellesley assumed the whole civil and military government of the Carnatic. A grandson of Muhammad Ali was recognised as titular Nawab, and one-fifth of the revenue was paid to him. In 1855 the Nawab died leaving no son, and Lord Dalhousie decided that no successor should be recognised, on the ground that the treaty of 1801 created merely a personal, and not a hereditary title.

Omra, himself, to the cause of the British Government and its allies, the meaning of which was not discovered till Seringapatam was taken, and the papers of Tipu had fallen into the hands of the British Government. Among them was found all the written communications which had been carried on between the Nawab Mahomed Ali and the Nawab Omdat ul Omra, his son, and Hyder Ali and Tipu Sultan, without the knowledge of the Company's Government.

Nawabs guilty of treachery to the Company

The fact of the existence of the correspondence alone was a breach of the treaties by which the Nawabs of the Carnatic had been allied to the British Government.

54. LORD HASTINGS ON BRITISH INTERVENTION IN INTERNAL AFFAIRS OF INDIAN STATES[1].

I. Private Journal, February 1, 1814.

In our treaties with them (Indian Princes) we recognise them as independent sovereigns. Then we send a Resident to their Courts. Instead of acting in the character of ambassador, he assumes the functions of a dictator ; interferes in all their private concerns ; countenances refractory subjects against them, and makes the most ostentatious exhibition of this exercise of authority[2]. To secure himself the support of our Government, he urges some interest which, under the colour thrown upon it by him, is strenuously taken up by our Council ; and the Government identifies itself with the Resident not only on the single point but on the whole tenor of his conduct.

Powers of Residents in Indian States

1 See Mehta, *Lord Hastings and the Indian States*.

2 Colonel Macaulay wrote to the Raja of Cochin, "The Resident will be glad to learn that on his arrival near Cochin the Raja will find it convenient to wait upon him." (*Cochin State Manual*, p. 138).

II. Letter to Metcalfe[1], Resident at Hyderabad.

2............you say that you propose 'our interference in the Nizam's affairs to be not merely right, but also a duty, arising out of our supremacy in India which imposed on us the obligation of maintaining the tranquillity of all countries connected with us, and consequently of protecting the people from oppressions, as no less necessary than the guaranteeing of their rulers against revolution.' The assumption of our possessing a universal supremacy in India involving such rights as you have described is a mistake. Over States which have by particular engagement rendered themselves professedly feudatory, the British Government does, no doubt, exercise supremacy ; but it never has been claimed, and certainly never has been acknowledged, in the case of Native Powers standing within the denomination of allies. Although a virtual supremacy may undoubtedly be said to exist in the British Government from the inability of other States to contend with its strength, the making such a superiority a principle singly sufficient for any exertion of our will, would be to misapply and to pervert it to tyrannic purpose.

Distinction between feudatories and allies

3............you observe, 'the refuge of a people intolerably vexed, is in emigration or insurrection; and as we ensure the Nizam's Government against rebellion, it seems to be incumbent on us to save his subjects from grievous oppressions.' The argument of supremacy having been set aside, nothing but the tenure of some special engagement could render us liable to the call or allot to us the title for such interposition.........

Intervention in internal affairs not justified, except by special engagement

4. Paragraphs 4 and 5 (of your letter) plead necessity for our intervention, because the Nizam

1 See Panikkar, *The Evolution of British Policy Towards Indian States*, pp.52-56. For Metcalfe's work in Hyderabad see Thompson, *Lord Metcalfe*, pp. 189-231.

does not rule his subjects with equity and prudence. The fact of maladministration is unquestionable and must be deplored. Does that, however, decide the mode in which alteration is to be effected ? Where is our right to determine that the amount of the evil is such as to demand our taking the remedy into our hands ?........Were such a pretence allowable, a powerful State should never want a colour for subjugating a weak neighbour. The consequence is so obvious that no principle in the law of nations leaves room for acting on such a presumption. It is admitted, that if convulsions rage so violently in one State as clearly to threaten the excitation of ferment in a bordering one, the latter may be justified in reducing to order the nation by which its tranquillity was menaced. This, however, is an extreme case, at the same time that it is of a description strictly defined. No analogy exists between indisputable exigency and an asserted convenience, where vague arbitrary charges, if tolerated as a ground of procedure, would furnish ready pretext for the foulest usurpations.

Mal-administration is no justification for intervention

III. Private Journal, February 6, 1816.

Our object ought to be to render the British Government paramount in effect, if not declaredly so. We should hold the other States as vassals, in substance, though not in name ; not precisely as they stood in the Moghul Government but possessed of perfect internal sovereignty and only bound to repay the guarantee and protection of their possessions by the British Government with the pledge of two great feudal dues.

States should enjoy 'perfect internal sovereignty.'

First, they should support it with their forces in any call. Second, they should submit their mutual difference to the head of the confederacy (our Government) without attacking each other's territories. A few subordinate stipulations on our part with immunities secured in return to the other side

Duties of Indian States towards the Company

(especially with regard to the succession) would render the arrangement ample without complication or undue latitude. Were this made palatable to a few states, as perhaps it easily might, the abrogation of treaties with the Powers who refuse to submit to the arrangement would soon work upon their apprehensions in a way that would bring them at last within the pale of the compact. The completion of such a system, which must include the extinction of any pretension to pre-eminence in the court of Delhi[1], demands time and favourable coincidence....

55. LORD HASTINGS'S TREATY WITH HOLKAR[2], 1818.

[This treaty was concluded after the defeat of the Holkar's army in the Third Anglo-Maratha War.]

British protection

Article 1. Peace being established with the Maharajah Mulhar Raw Holkar, the Company's Government agree that it will not permit any state or any freebooter to be unpunished that shall commit any outrage or hostility against the territories of Maharajah.......and the British Government will at all times extend the same protection to the territories of Maharajah........as to its own.

* * * * *

Article 9. Maharajah....... engages never to commit any act of hostility or aggression against any

1 Elsewhere Lord Hastings observes, "The House of Timur had been put so much out of sight, that all habit of adverting to it was failing fast in India ; and nothing has kept the floating notion of a duty owed to the imperial family but our gratuitous and persevering exhibition of their pretensions—an exhibition attended with much servile obeisance in the etiquette imposed upon us by the ceremonial of the court. I have thence held it right to discountenance any pretension of the sort, either as it applies to us or to any of the native princes."

2 January 6, 1818. See Grant Duff, *History of the Mahrattas*, and Mehta, *Lord Hastings and the Indian States*.

of the Company's allies or dependants or against any other Power or State whatever. In the event of differences arising, whatever adjustment the Company's Government weighing matters in the scale of truth and justice may determine, shall have the Maharajah's entire acquiescence. The Maharajah agrees not to send or receive vakeels from any other state or to have communication with any other state except with the knowledge and consent of the British Resident.

British control over foreign relations

Article 10. The British Government hereby declares that it has no manner of concern with any of the Maharajah's children, relations, dependants, subjects, or servants, with respect to whom the Maharajah is absolute.

Holkar's 'absolute' control over his subjects

* * * *

Article 13. Mulhar Raw Holkar engages never to entertain in his service Europeans or Americans of any description without the knowledge and consent of the British Government.

Exclusion of Europeans

56. LORD HASTINGS'S TREATY WITH BHOPAL[1], 1818.

[The rulers of Bhopal had loyally supported the British Government since 1778. This treaty was concluded in connection with the Third Anglo-Maratha War.]

Article 1. There shall be perpetual friendship, alliance and unity of interests between the Honourable the East India Company and the Nawab of Bhopal, his heirs and successors; and the friends and enemies of one party shall be the friends and enemies of both.

Perpetual alliance

Article 2. The British Government engages to guarantee and protect the principality and territory of Bhopal against all enemies.

British protection

1 February 26, 1818.

British control over foreign relations

Article 3. The Nawab of Bhopal and his heirs and successors will act in subordinate co-operation with the British Government and acknowledge its supremacy and will not have any connection with other Chiefs and States.

Article 4. The Nawab and his heirs and successors will not enter into negotiation with any Chief or State without the knowledge and sanction of the British Government.......

Article 5. The Nawab and his heirs and successors will not commit aggression on any one. If by accident disputes arise with any one, they shall be submitted to the arbitration and award of the British Government.

Military co-operation of Bhopal

Article 6.............Whenever required and when necessary, the whole of the Bhopal forces shall join the British army excepting such a portion as may be requisite for the internal administration of the country.

* * * *

No British interference in internal administration

Article 9. The Nawab and his heirs and successors shall remain absolute rulers of their country and the jurisdiction of the British Government shall not in any manner be introduced into that principality.

57. LORD HASTINGS'S TREATY WITH MEWAR,[1] 1818.

[Ravaged by the Marathas and weakened by internal dissensions, Mewar appealed for British protection as early as 1805, but it was not till the days of Lord Hastings that the Rajput States were brought within the Company's system of alliances.

Perpetual alliance

Article 1. There shall be perpetual friendship, alliance, and unity of interests between the two States from generation to generation, and the friends and enemies of one shall be friends and enemies of both.

1 January 13, 1818. See Tod, *Annals of Mewar*, Chapters XVII-XVIII; Mehta, *Lord Hastings and the Indian States*.

Article 2. The British Government engages to protect the principality and territory of Oudeypore.

Article 3. The Maharana of Oudeypore will always act in subordinate co-operation with the British Government, and acknowledge its supremacy, and will not have any connection with other Chiefs or States.

British supremacy

Article 4. The Maharana of Oudeypore will not enter into any negotiation with any Chief or State without the knowledge and consent of the British Government; but his usual amicable correspondence with friends and relations will continue.

British control over foreign relations

Article 5. The Maharana of Oudeypore will not commit aggressions upon any one; and if by accident a dispute arise with any one, it shall be submitted to the arbitration and award of the British Government.

Article 6. One-fourth of the revenues of the actual territory of Oudeypore shall be paid annually to the British Government as tribute for five years and after that term three-eighths in perpetuity........

Tribute

* * * *

Article 8. The troops of the State of Oudeypore shall be furnished according to its means, at the requisition of the British Government.

Military service

Article 9. The Maharana of Oudeypore shall always be absolute ruler of his own country, and the British jurisdiction shall not be introduced into that principality.[1]

No British interference in internal affairs

58. AMHERST'S TREATY WITH SIROHI[2], 1823.

Article 1. The British Government consents to take under its protection, and to receive amongst the

British supremacy

1 Similar treaties were concluded by Lord Hastings with other Rajput States—Jaipur, Jodhpur, Bikaner, Kotah, Bundi, etc.

2 September 11, 1823.

number of its dependant and tributary States, the Chiefship and territory of Sirohi.

Article 2. The Regent Rao Sheo Sing on his own behalf, and in the name of the Rao, his heirs and successors, hereby acknowledges the supremacy of the British Government, and engages to discharge with fidelity the duties of allegiance, and to observe punctually the other conditions detailed in this engagement.

Article 3. The Rao of Sirohi will not form or maintain connections with any other States or Chiefs. He will not commit aggression on any one. If by accident disputes arise with a neighbour, they shall be submitted to the arbitration and decision of the British Government That Government undertakes also to arbitrate and adjust any claims which may be possessed or advanced by other States upon Sirohi or *vice versa*, whether for lands, service, money, contributions, or otherwise.

British interference in internal affairs

Article 4. The jurisdiction of the British Government shall not be introduced into the territories of Sirohi, but the rulers thereof shall at all times attend to the advice of the Officer of the British Government in the administration of their affairs, and act in conformity thereto.[1]

British advice to be followed

Article 5............the Regent hereby expressly and specially engages to follow the counsel of the British authority in all his proceedings for the restoration of the prosperity of the country and the introduction of good order and regularity........

Article 6. If any of the sirdars and thakors of

1 Article 5 of Lord Hastings's treaty with Dungarpur, February 13, 1819: "The affairs of the principality of Dungaurpore shall be settled according to the advice of the British Government, in which the British Government will pay all practicable attention to the will of the Maha Rawul." Article 5 of Lord Hastings's treaty with Banswara (February 13, 1819) is exactly similar.

Sirohi shall commit offences or be guilty of disobedience, the same shall be punished by fine or confiscation of lands, or such other infliction as may be in each case determined on, in concert and concurrence with the Officers of the British Government.

Article 8. The State of Sirohi shall pay such tribute to the British Government to defray the expenses incurred by undertaking its protection, as may be determined on...... .. Tribute

Article 9. ....it shall be competent to the Officers of the British Government to recommend such rates of transit duties and regulations for the collection of customs within the limits of the Sirohi territory as may............be judged expedient, and to interfere from time to time to enforce or amend the same. Collection of customs

59. ELLENBOROUGH ON INDIAN STATES[1], 1842.

[It has been said that Lord Ellenborough "was perhaps, the first Governor-General who fully realized the position in which the British Government now stands towards the Native States of India. Averse from wholesale annexation, as he showed in the cases of Gwalior and Indore, both of which States afforded him opportunities which Lord Dalhousie would hardly have allowed to pass, he was yet determined that our supremacy should be understood and respected by all, and that the Native States should for the future submit to such a measure of control as might be necessary for the general order and welfare of the Empire Clearly perceiving that doctrines of European international law were not applicable in their entirety to our relation with those states, he refused to permit gross misgovernment or disorder in any principality within our external frontier."[2] Ellenborough's policy

Lord Ellenborough placed a civilian, Robert Hamilton, in charge of the Central India Agency, and "the new agent

1 Instructions to political officers, April 26, 1842.

2 H. M. Durand, ***Life of Sir Henry Durand,*** p. 83.

Indore succession

distinguished himself shortly after his arrival by the unauthorized elevation of young Tookaji Holkar to the chiefship of Indore with all the formalities usual in the case of an hereditary successor. This step lost the Government the opportunity of marking an important line of policy in our dealings with our feudatories, for the young chief was not a lineal heir, and Lord Ellenborough had proposed to recognise his succession on certain suitable terms. Hamilton was severely censured..... "[1]]

'Utmost personal consideration and respect' to be shown to Princes

2. The Governor-General enjoins that you will on all occasions manifest the utmost personal consideration and respect for the several native princes with whom you may communicate. You will consult and attend to their personal wishes, you will give them whenever you may be required so to do, or whenever it may appear to you to be required for their interest or that of the British Government, with which theirs is particularly identified, such advice as may seem best calculated to conduce to their comfort and to their prosperity and their honour ; but you will not unnecessarily intrude with such advice on occasions not requiring it for such high and just objects, but leave them in the ordinary concerns merely of their families and their courts, not only without control, but without observation.

Conditions under which advice should be given to Princes

3. You will consider yourself to be placed near the native princes, to whom you may be deputed, as the representative of the friendship as much as of the power of the British Government, and you will be mindful that even the necessary acts of authority may be clothed with the veil of courtesy and regard.

Authority to be exercised under 'veil of courtesy and regard'

4. You will distinctly understand that the further extension of its dominion forms no part of the policy of the British Government; that it is desirous on all occasions of respecting the independence of native states and that satisfied with the extent

1 H. M. Durand, *Life of Sir Henry Durand*, p. 82.

of its own rule, it has no other wish than that every state within the limits of India should freely exercise its rights as recognised by Treaty, and contribute by the maintenance, by its own means, of peace and good government in its dominions, to the general happiness of the whole people.

Annexation not wanted

5. But while you will proceed upon the conviction that these are the sincere wishes of the British Government, you will likewise understand that it will view, with the severest displeasure, such an exercise of its rights by any power as may have a tendency to disturb the public peace of India.

Disturbance of peace of India not to be allowed

6. Such disturbance of the public peace whether effected by direct hostilities between States or by the outbreaks which the badness of a government may provoke, or its weakness permit, could not have existence without immediately affecting the interests of the subjects of the British Government whom it is its first duty to protect.

7. But the Governor-General feels that the Government has yet another duty to perform—that placed in the possession of great power, it is deeply responsible to Providence for the exercise of that power in such manner as may most conduce to the happiness of all tribes and nations within the limits of India, under whatever form of rule they may severally be placed.

Responsibility of British Government for happiness of India

8. The Governor-General has advisedly selected the moment of victory[1] for laying before you for your guidance these principles of justice and moderation. They are the principles upon which his policy will ever be founded, adopted after deliberate reflection and as little liable to be changed by reverse as they have been by success.

9. You are directed to communicate the purport of this dispatch as contained in the accompany-

1 Over Afghanistan.

ing Persian Memorandum, directly or through your subordinates to all the princes and chiefs with whom you are deputed to communicate.

60. ELLENBOROUGH'S TREATY WITH SINDHIA[1], 1844.

[Daulat Rao Sindhia died in 1827. Under his successor, Jankoji Rao Sindhia, rival parties fomented endless intrigues in the State. Lord William Bentinck refused to interfere, on the ground that "it was immaterial who held the reins of power in a State, provided that hostilities did not break out" Jankoji Rao Sindhia died in 1843, to be succeeded by an adopted son, a minor, Jayaji Rao Sindhia The army, about 40,000 strong, assumed complete control of affairs. This army was defeated by British forces in the battles of Maharajpur and Panniar, and a fresh treaty was made. "Lord Ellenborough's action in the Gwalior case was the object of much criticism and the main reason for his recall."[2]]

Article 6. And whereas the British Government is bound by Treaty to protect the person of His Highness the Maharajah, his heirs and successors, and to protect his dominions from foreign invasion, and to quell serious disturbances therein, and the army now maintained by His Highness is of unnecessary amount, embarrassing to His Highness's Government and the cause of disquietude to neighbouring states, it is therefore further agreed that the military force of all arms hereafter to be maintained by His Highness..... ..shall at no time exceed nine thousand men........

British liabilities

Restriction on size of Sindhia's army

Article 8. And inasmuch as it is expedient to provide for the due administration of the government during the minority of His Highness..... it is fur-

1 January 13, 1844

2 *The Cambridge History of India*. Vol. V. pp. 579-580. For Lord Ellenborough's own defence see Law, *India Under Ellenborough*. p. 28.

ther agreed that during such minority the persons entrusted with the administration of the government shall act upon the advice of the British Resident in all matters whereon such advice shall be offered, and no change shall be made in the persons entrusted with the administration without the consent of the British Resident acting under the express authority of the Govennor-General. British control during minority

61. ELLENBOROUGH'S LETTER TO HOLKAR[1], 1844.

The intelligence of the early death of the late Maharajah[2] was a cause of much grief to me. By that event the guddee of the Holkar State became vacant, there being no one of the Holkar family remaining entitled to succeed to the principality or to adopt an heir to the guddee.

It became necessary for the Governor-General to make an arrangement for the administration of the government of the Holkar principality. British control over succession

.......I was induced to direct the British Resident at Indore to nominate your Highness[3] to the occupation of the vacant guddee.

It is the intention of the British Government.... that the chiefship should descend to the heirs male of your Highness's body lawfully begotten, in due succession, from generation to generation.

Until the period of your Highness coming of age the affairs of the government will be administered in your behalf, as at present, by a competent Regency acting under the general superintendence, and in all matters of importance the instructions, of the British Resident..... British control over administration during minority

1 November 9, 1844. For the historical background see Aitchison, *Treaties, Engagements, and Sunnuds*, Vol. IV. 1864, pp. 286-288.

2 Hari Rao Holkar.

3 Tukaji Rao Holkar.

62. DALHOUSIE ON BRITISH INTERVENTION IN INTERNAL AFFAIRS OF INDIAN STATES[1], 1851.

System of Lord Hastings

[Lord Dalhousie inherited the system consolidated by Lord Hastings, which has been described by Lee-Warner as follows : "..........protection was given to nearly every state, and with it a recognition of internal sovereignty." The engagements concluded with Khairpur in 1832, with Bahawalpur in 1833, with Kashmir in 1846 and with the petty State of Jind on the very eve of Lord Dalhousie's appointment contained assurance of non-interference in internal affairs Thus "an excessive importance was attached in 1847 to the obligations imposed upon the protecting power by its promises to avoid interference with the domestic affairs of its allies."

Dalhousie's problem

Lord Dalhousie found himself in a dilemma Should he remain loyal to treaty obligations and incur the reproach of conniving at maladministration in States like Oudh and Hyderabad, or should he interfere in internal affairs in violation of treaties to ensure good government ? The case against tampering with the sacred principle of non-interference was strong. If once he began to correct misrule in a small State, he must do the same in a larger one. The Company had no public servants whom it could spare for the work of supervising reforms in the principalities. Nor had Lord Dalhousie at his command the military forces, the powerful support of railways, the influence of education, or the public opinion which, owing to his administration, his successors were able to employ. It was therefore out of the question to depart from the rule of inactivity."

"Independent" and "dependent" States

Lord Dalhousie tried to solve the problem by dividing the States into two classes—"independent" and "dependent." The classification was neither logical nor clear, but it offers a clue to his policy. Hyderabad was an "independent" State. As a prelude to introducing administrative reforms there the Resident had proposed that the State should be placed under the direct administration of the Company for a term of years. Lord Dalhousie recorded his "entire dissent from, and disapproval of, the policy suggested."[2]]

1 Minute, May 27, 1851. See Panikkar, *The Evolution of British Policy Towards Indian States*, pp. 67-68.

2 See Lee-Warner, *Life of Dalhousie*, Vol. II, pp. 108, 115.

......it is often maintained that such is the misgovernment of His Highness the Nizam, that so great are the violence and lawless confusion which pervade every part of his dominions, that it has become the moral duty of the British Government as the paramount power in India to assume to itself the government of His Highness' dominions in order to correct the evils of his rule and to rescue his subjects from the sufferings which are alleged to proceed therefrom.

I desire to repudiate all adhesion to a doctrine which leads in my humble judgment to a system of unwarranted and officious meddling.

Maladministration no justification for intervention

In too many instances I fear it proceeds not from sentiments of enlarged benevolence but from the promptings of ambitious greed. Even where the motive from which it springs is pure and sincere, the doctrine is in my view not the less unsound. The acknowledged supremacy of the British power in India gives to it the right, and imposes upon it the duty, of maintaining by its influence and (if need be) compelling by its strength the continuance of general peace. It entitles it to interfere in the administration of Native Princes if their administration tends unquestionably to the injury of the subjects or of the allies of the British Government.

Occasions when intervention is justified

But I recognise no mission confided to the British Government which imposes on it the obligation or can confer upon it the right of deciding authoritatively on the existence of native independent sovereignties and of arbitrarily setting them aside, whenever their administration may not accord with its own views, and although their acts in no way affect the interests or security of itself or its allies.

Still less can I recognise any such property in the acknowledged supremacy of the British Govern-

British agreements with States described as 'international contracts'

ment in India as can justify its ruler in disregarding the positive obligations of international contracts, in order to obtrude on Native Princes and their people a system of subversive interference which is unwelcome alike to people and Prince.

63. DALHOUSIE ON ANNEXATION OF INDIAN STATES.[1]

[It is necessary to remember that Lord Dalhousie did not invent the Doctrine of Lap e, and that he restricted it to "dependent" States It was an accident that in his time several princes of "dependent" States should have died without male heirs and provided occasions for applying the Doctrine more frequently than in the time of his predecessors.

Doctrine of Lapse applicable to "dependent States"

As early as 1834 the Court of Directors observed, "Wherever it is optional with you to give or to withhold your consent to adoptions, the indulgence should be the exception and not the rule, and should never be granted but as a special mark of approbation" In 1840 sanction to adopt an heir was not granted to the widows of the Angria family who ruled in Kolaba Mandavi was annexed and treated as a lapse In 1842 the titular dignity of the Nawabs of Surat was abolished, and Lord Auckland's Government declared their policy "of abandoning no just and honourable accession of territory or revenue, while all existing claims of right are at the same time scrupulously maintained ']

I. Doctrine of Lapse[2], 1848.

Right of British Government to acquire territory on failure of heirs

I take this fitting occasion of recording my strong and deliberate opinion, that, in the exercise of a wise and sound policy, the British Government is bound not to put aside or to neglect such rightful opportunities of acquiring territory or revenue as may from time to time present themselves, whether they arise from the lapse of subordinate states, by the failure of all heirs of every description whatsoever,

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1 See Lee-Warner, *Life of Dalhousie*, Vol. II, Chapter V.

2 Minute, August 30, 1848.

or from the failure of heirs natural, where the succession can be sustained only by the sanction of the Government being given to the ceremony of adoption according to Hindu law.

II. Doctrine of Lapse,[1] 1854.

The opinion which I gave (on annexation on failure of heirs) was restricted wholly to subordinate states, to those dependent principalities which, either as the virtual creation of the British Government, or from their former position, stood in such relation to that Government as gave to it the recognised right of a paramount power in all questions of the adoption of an heir to the sovereignty of that State.

Doctrine of Lapse confined to 'subordinate States'

III. Doctrine of Lapse,[2] 1854.

I had a definite principle of distinction in my mind, and I think it is a sound one. There are three chief classes of Hindu States in India.

1st. Hindu sovereignties which are not tributary and which are not and never have been subordinate to a paramount power ;

2nd. Hindu sovereignties and chiefships which are tributary, and which owe subordination to the British Government as their paramount in the place of the Emperor of Delhi, the Peshwa, etc. ;

States divided into three classes

3rd. Hindu sovereignties or chiefships created or revived by the sanad (grant) of the British Government.

Over principalities of the first class I contend that we have no power whatever, and have no right, except that of might, over their adoptions[3].

British policy to different classes of States

1 Minute, January 28, 1854.

2 June 13, 1854.

3 Lord Dalhousie wrote on June 29, 1854, "I repeat that a Hindu principality, such as Tehri, not tributary, nor sub-

Principalities of the second class require our assent to adoption, which we have a right to refuse, but which policy would usually lead us to concede.

In the principalities of the third class I hold that succession should never be allowed to go by adoption[1].

IV. Annexation of Satara.

Inter-pretation of treaty of 1819

The words "heirs and successors"[2] must be read in their ordinary sense, in the sense in which they are employed in other treaties between states. And in the absence of all evidence or reasonable presumption, founded on known facts, or on some special wording of the British instrument, in favour of a wider interpretation, those words cannot be construed

ordinate, and not having the British Government as its paramount in the technical sense, has a perfect right to regulate its own succession ; and the Government of India has no more right to interfere with it than it has to meddle with the succession of France." (Lee-Warner, *Life of Dalhousie*, Vol II, pp. 154-155).

1 These principles were approved by Sir Charles Wood (Lee-Warner, *Life of Dalhousie*, Vol II, p. 156).

2 Treaty with Satara, 1819 : "The British Government agrees to give the country or territory specified to the government or state of His Highness Maharaja Chhatrapati. His Highness......and His Highness's sons and heirs and successors are perpetually to reign in sovereignty over the territory........".

In confirming the action of the Governor-General the Court of Directors observed, "We are fully satisfied that by the general law and custom of India, a dependent principality like that of Satara cannot pass to an adopted heir without the consent of the Paramount Power ; that we are under no pledge, direct or constructive, to give such consent ; and that the general interests committed to our charge are best consulted by withholding it". V. A. Smith says (*Oxford History of India*, p. 704), "That clear ruling places on the shoulders of the Home Government the full responsibility for all the cases of annexation by reason of lapse effected by Lord Dalhousie."

'Ruling' of Court of Directors

to secure to the Rajas of Sattara any other than the succession of heirs natural, or to grant to them the right of adopting successor to the raj without that sanction of the *sovereign state*, which may be given, or may be withheld, and which, by ordinary and invariable practice, is necessary to the validity of such an act of adoption by the prince.

Adoption without British sanction not vaild

V. Annexation of Jhansi[1].

There is no heir of the body of the late Raja—there is no heir whatever of any Raja or Subadar of Jhansi with whom the British Government has at any time had relations ; the late Raja was never expected by his own people to adopt, and a previous adoption by the Raja, whom the British Government constituted hereditary chief of Jhansi, was not acknowledged by the British Government. Wherefore it follows that the right to refuse to acknowledge the present adoption by Gangadhar Rao is placed beyond question.

VI. Annexation of Nagpur[2].

The kingdom of Nagpore became British territory by simple lapse, in the absence of all legal heirs. The kingdom, which had been granted to the reigning Raja by the British Government when it had become forfeited by the treachery of Appa Sahib[3]

1. In 1817 Rao Ramchand was created by Lord Hastings hereditary ruler of Jhansi on the terms of "subordinate co-operation" In 1835 he died childless, and his uncle. Raghunath Rao, was recognised as his successor in preference to a son adopted on his deathbed. On his death in 1838 without any lineal heir his brother Gangadhar Rao was made his successor. He proved so unfit to rule that the state was administered for him by the British Government. In 1853 he died, leaving no issue, but having adopted a son on his deathbed.

2 Minute, February 28. 1856.

In 1817 Appa Sahib attacked Jenkins, the Resident at

was left without a claimant when the Raja died. No son had been born to his highness; none had been adopted by him; none........was adopted at the Raja's death by the Ranees, his widows. There remained no one male of the line who descended from the stock and bore the name of Bhonsla. The British Government, therefore, refused to bestow the territory in free gift upon a stranger, and wisely incorporated it with its own dominions.

Extinction of Bhonsla family

VII. Annexation of the Carnatic[1].

As the treaty by which the *Masnad* of the Carnatic was conferred on his Highness's predecessor was exclusively a personal one; as the Nawab had left no male heir; and as both he and his family had disreputably abused the dignity of their position, and the large share of public revenue which had been allotted to them; the Court of Directors has been advised to place the title of Nawab in abeyance, granting fitting pensions to several members of the Carnatic family.

Nagpur, but his troops were defeated in the battle of Sitabaldi and he surrendered. Lord Hastings deposed him and annexed his dominions lying to the north of the Narmada. The remaining portions were granted to the Raja whose death led to the extinction of the State in Lord Dalhousie's time.

1 Lord Dalhousie's decision on the Carnatic has been severely criticised by Arnold, and defended both as to law and policy by Jackson. The discussion turned upon the question whether or no the treaty of July 31, 1801, establishing Azim-ud-daula in the rank and state of his ancestors, and transferring the administration to the Company, created a personal or a hereditary title. Both Lord Harris, Governor of Madras (1854-1859), and Lord Dalhousie held that the treaty was purely personal. Lord Harris observed that "the semblance of royalty, without any of the power, is a mockery of authority which must be pernicious—that it is impolitic and unwise to allow a pageant to continue which though it has been politically harmless, may at any time become a nucleus for sedition and agitation". (Lee-Warner, *Life of Dalhousie*, Vol. II, pp. 140-142).

Treaty of 1801